United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

74-1660

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United States Court of Appeals
FOR THE SECOND CIRCUIT

DOROTHY BOYD, individually and on behalf of all others similarly situated,

Plaintiff-Appellee,

INEZ STONEY,

Intervenor-Plaintiff-Appellee,

against

THE LEFRAK ORGANIZATION and LIFE REALTY, INC.,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JOINT APPENDIX
Volume II, Pages 453-867.

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UNITED STATES COURT OF APPEALS
FILED
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SECOND CIRCUIT

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DOROTHY BOYD, individually, and on behalf of all others similarly situated

Plaintiff

INEZ STONEY

Intervenor-Plaintiff

-against-

THE LEFRAK ORGANIZATION and LIFE REALTY, INC.

Defendants

Index No. 71-C-1433

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225 Cadman Plaza East
Brooklyn, New York
December 5, 1973

The trial was continued from December 4, 1973 on December 5, 1973 at the United States District Court for the Eastern District of New York, beginning at 9:30 a.m.

Before: HONORABLE TOM CLARK
United States District Judge

JOSEPH L. BENEDETTO
Acting as Official Court Reporter

Appearances:

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Of Counsel

THE COURT: Miss Balen, are you ready to proceed?

MISS BALEN: Yes. Plaintiff calls as its next witness, Mr. Edward Kopp.

EDWARD KOPP, after having been first duly sworn, testified as follows:

THE COURT: State your name for the record.

THE WITNESS: Edward Kopp.

DIRECT EXAMINATION BY MISS BALEN:

Q What is your address, Mr. Kopp?

A 250 Church Street.

Q Are you presently employed?

A Yes. I'm employed by the Human Resources Administration, Department of Social Services.

Q In what capacity are you employed by the Human Resources Administration?

A Director of Special Services, Housing Services.

Q How long have you had that position?

A I've held that position since the office was created in March.

Q How long have you held that position? How long were you employed before you held that position? Were you employed before you held that position?

A Yes.

Q How were you employed?

A Are we going back?

Q The position before being Director of Special Services, of Housing Services? You held a position before then?

A Yes. I was then a member of the Hotel Task Force, a Task Force that was created especially to handle emergency situations.

Q How long did you hold that position?

A I held that position from December of '70.

Q Now, what are your duties and responsi-

bilities in the position of Director in the Office of Special Housing Services?

A As Deputy Director, I take care of all of the Director leaves to me in an office that was created to handle special housing conditions, to provide services for those people who are forced into problem housing conditions such as hotels and SRO buildings.

Q Now, could you explain what the Hotel Task Force you mentioned does, more fully?

A Yes. The Hotel Taxk Force - (interruption)

MR. BRODSKY: Excuse me for a minute. Now that he's getting into more of his background of what the Hotel Task Force does, I'd like to note my objection, your Honor, on the following grounds:

I have a good idea of what Mr. Kopp is going to testify to, having been present at a deposition that was taken at a pre-trial hearing and as I understand it, Mr. Kopp had nothing to do with any Lefrak buildings.

He worked in the Hotel Task Force trying to locate welfare recipients but there is no connection between what Mr. Kopp did and what

the Lefrak Organization did and on that ground I object to any testimony of Mr. Kopp.

THE COURT: We will have to see what he testifies to, whether it has any relevancy.

Q What were your duties and responsibilities as a member of the Hotel Task Force?

A In the Hotel Task Force, we tried at first to expedite the moving of those families that became lodged in hotels.

A crisis had built up in the City where a great many welfare families became lodged in hotels. The Hotel Task Force was organized to actually expedite the moving of those families from the hotels to permanent housing.

Q What did you do, Mr. Kopp, in that Hotel Task Force?

A In that Hotel Task Force, I did everything. The members of the Task Force were all out in the field and solving all of their little problems of getting them from the hotel into a permanent apartment; everything from literally moving people to helping them go for an interview with the Housing Authority.

If they were going to have to go to the Housing Authority or in dealing with brokers, in dealing

with landlords in trying to secure an apartment, for those who could not get into public housing - (interruption)

THE COURT: I take it what you were doing was you were trying to effectuate the policy of ADC, that these recipients should not be in hotels but in private apartments?

THE WITNESS: Yes.

THE COURT: Very well.

Q Did Public Assistance Families still live in hotels?

A Yes.

Q Do you know or do you have any knowledge of how it is that they came to live in hotels today?

MR. BRODSKY: I object, your Honor.

THE COURT: Well, if he knows, to his own knowledge, whether it may be a policy of the Agency or a State policy. It might be something else.

MR. BRODSKY: My objection is not on the grounds the witness may not know but it may not have any relevancy here.

THE COURT: It may not have relevancy to apartments but to hotels.

MR. BRODSKY: That's the nature of my objection.

THE COURT: I don't know how relevant it might be. I don't know. Let's see what he says.

A Most of the people that are in hotels, they are there either because they have been burned out of an apartment or a "vacate" has been placed on a particular building, the building has to be shut down for some reason, maybe a health problem, maybe a structural reason.

THE COURT: In other words, it would be an emergency?

THE WITNESS: Another emergency.

THE COURT: Being in a hotel is the exception to the general rule?

THE WITNESS: That's right.

Q What particular methods have been used by the Department of Social Services to re-house public assistance recipients living in hotels with respect to locating housing?

MR. BRODSKY: May I have a continuous objection so I don't have to stand up all the time?

THE COURT: Very well.

MR. BRODSKY: Unless it involves a Lefrak building, it is my position it has no relevancy.

THE COURT: You may have a running objection and an exception also.

MR. BRODSKY: Thank you.

MISS BALEN: Would you like to have the last question read back?

THE WITNESS: Yes.

(The Reporter read the last question as follows: "Q What particular methods have been used by the Department of Social Services to re-house public assistance recipients living in hotels with respect to locating housing?")

A Yes. When the crisis built up a large number of people were housed in hotels and they were not moving out. An example was given by the City as to what can be done about this and two City agencies that were engaged in housing, came to the aid of the New York City Housing Authority and the Department of Relocation.

The New York City Housing Authority offered a certain number of apartments that I believe was something like a thousand available apartments that

they promised to give at a hundred a month. The Department of Relocation also went into a special lease program, leasing certain buildings to people to put them in.

However, it became evident that these sources were not going to be enough, the public sources, and so the Task Force, in cooperation with our own housing unit from the Department of Social Services, tried to locate other apartments throughout the City for the people to live in and, of course, the people, themselves, were out looking for apartments to which they could move.

We contacted various brokers and also private landlords in an attempt to get private housing for the individuals.

Q Were finder's fees ever used?

A Yes. Finder's fees are used through the Department of Re-Location. The Department of Re-Location has a finder's fee program.

Finder's fees, however, were used mostly in those cases of families placed by the Department of Relocation on a few exceptions and they were used by our place.

Q You mentioned contacting landlords and brokers. Did you, yourself, do this?

A Yes. On many occasions.

Q To your knowledge, did others in the Hotel Task Force do this?

A Yes. I think all the members of the Hotel Task Force did this.

Q Could you describe, in detail, your experience in contacting landlords and brokers?

A Generally, it was fairly negative. Eventually, we found that when brokers or landlords throughout the City became aware of the fact that we had welfare clients, they would suddenly get very up tight and the buildings that before had been available suddenly no longer became available and they shied from the situation with one exception, and that, of course, was with landlords who had buildings that were in very, very bad condition and they were having trouble renting them because of the poor condition of the buildings, themselves, and so they saw this as a possible opportunity to unload poor apartments.

Q Did you contact landlords all over the City of New York?

A Yes. We didn't limit ourselves. We were also very pragmatic. We had people in hotels and we had to get them out in a hurry.

In some places like the Broadway Central, we had to get them entirely moved in 30 days because of the emergency conditions so we went to whoever we could. We grabbed the phone books and we went out to see them.

It wasn't systematic. We needed so many apartments and so many went into them.

Q When did this occur in point of time?

A The crisis came to a head, City-wide, through adverse publicity that built up over a family that got placed in the Waldorf Astoria and that created a bit of a shock.

THE COURT: What time?

THE WITNESS: March of 1971.

Q Did those landlords and brokers, who told you tjey didn't wish to rent their apartments to your clients, say this with reference to a particular family you were trying to place?

A Can you repeat that?

Q Did the landlords and brokers, who you contacted, who told you that they did not wish to rent their apartments to your clients, to welfare recipients, in the hotels, say this with reference to a particular family you were trying to place?

A Sometimes to a particular family, sometimes just through the general statement, "We don't want welfare people."

This was usually couched in some other teminology. They seldom came out and said, "We don't want welfare people."

They indicated that they wanted people who had steady employment, that they wanted people who were receiving a regular salary.

Q Are you familiar with the circumstances wherein landlords refused to rent their apartments with reference to a particular family?

A Yes.

Q Those circumstances that you are familiar with, please, would you tell us what they were?

A There was one particular case of a family that was on supplemental, a very large family that had a full income and too many members of the family for that income to adequately provide for it so they still fell on public assistance and this particular family, we found an apartment for through a broker and then suddenly the broker was aware the family was on supplementation and the broker attempted to conceal the fact from the landlord for a while, that the family was

on welfare, in dealing with the landlord.

Suddenly, of course, it had to be revealed because the check had to be made out from the Department of Welfare.

At that point, the landlord decided he no longer wanted the family.

Q Are you familiar with the rent approval procedures of the Department of Social Services?

A Do you know what I mean by "levels of approval"?

A Yes. I do.

Q Did the "Levels of approval" apply to welfare recipients re-housed by the Hotel Task Force?

A Yes. The "Levels of approval" applied but we tried in every instance - the "levels of approval" can be appealed to a higher level - so that when you get to the top one, you can always go to case consultation and try to obtain more money, if the situation warrants it.

We insisted that all cases be taken to the very top since these people were in hotels, we wanted to get them out, and there were not a number of apartments available for them so in many, many cases, the "levels of approval" were overridden by a case con-

sultation decision.

Q Did you attempt to find housing for those welfare recipients within the central level approval?

A Yes.

Q Were you able to find housing within the central level approval?

A On some occasions, on a few occasions within the central level. In most occasions, not.

MISS BALEN: Thank you.

I have no further questions of this witness.

MR. BRODSKY: Your Honor, at this time, I move to strike the testimony of the witness on the grounds there hasn't been a word of testimony about the Lefrak Organization.

THE COURT: Well, it's a class action. For the present time, I'm going to let it in. Maybe when I come to a decision, I'll strike it out.

CROSS-EXAMINATION BY MR. BRODSKY:

Q Mr. Kopps, you never contacted anybody from the Lefrak Organization, did you?

A To my knowledge, no.

Q And all these landlords that you've been

talking about, to your knowledge, had no connection to anybody from the Lefrak Organization, to your personal knowledge?

A Yes. To my personal knowledge, I don't specifically know.

Q Now, you say that when you did speak to the other landlords, even other than the Lefrak Organization, you did speak to some - do you remember the names of any?

A No.

Q You can't remember the name of one?

A No.

Q What they said to you was they wanted families who earned a certain amount of money; is that correct?

A Yes. Some came right out and came out very frankly and said, "We don't want welfare people."

Q Can you remember the names of any who said that?

A No.

Q And others said, "We want families who earn a certain amount of money" or what did they say?

A Some said, "Well, we want families that have a fixed earned income; we want working families; we

want people who work."

Q And when they said they wanted families who had a fixed family income, you determined that they didn't want welfare people?

A We, of course, tried to impress on them that the family had an income, that the Public Assistance check was an income but they wanted families who actually worked, they specified.

Q This large family that you talked about, the one in assistance you did talk about?

A Yes.

Q Strike that. Before we get to that. Can you remember the name of any landlord who told you they wanted people who worked, who were working people?

A No.

Q Can you remember the name of any broker who told you that?

A No.

Q Can you remember the name of any broker who told you they didn't want welfare recipients?

A No.

Q Now, this family, the one in assistance you talked about, this large family, how large was the family?

A I don't know exactly. It was somewheres, I believe, in the range of 10 to 12 children.

Q And what was the size of the apartment?

A I don't remember. It was an apartment adequate to the family needs.

Q How many bedrooms would you say that would be?

A As I recall the apartment, it was a Queens apartment somewhere in the section just above, just across the river and this particular apartment had a standard, it was in a huge complex and they had a standard ratio of so many, regardless, for such an such a size family and it was what this particular complex deemed to be adequate for that size family. It was large.

Q More than three bedrooms?

A Yes. More than three bedrooms.

Q And you say the broker cancelled from the landlord because of the fact that these people were getting assistance?

A Yes. The broker who dealt with that family. The way this originally got started in this particular case is that the family, it found the broker, and the family, at first, finding the broker, did not reveal to the broker that they were on welfare.

The broker had started dealing with the landlord, as I recall, and the argument ensued there where, suddenly, the family says to the broker, "We're on welfare but we're not really on welfare. We work full time but we're on supplementation" and the broker paniced and said, "Don't tell the landlord that" and it became evident, when they came to us, they were going to have checks from the Department of Social Services and the landlord would know instantly, from the checks, that these were welfare people.

We then explained to the broker this was simply an essential thing, a thing that had to be done.

MR. BRODSKY: All right. I have no further questions. I renew my motion to strike the testimony, your Honor.

REDIRECT EXAMINATION BY MISS BALEN:

Q Did you keep any records of the Hotel Task Force of those brokers and landlords from whom you you did get apartments from?

A Yes.

Q Did you keep any information, any particular information about those brokers and landlords?

A Yes. May I comment on this?

Q Yes.

A This was done in a very pragmatic way and not in a sophisticated way. In other words, anytime we could locate a landlord who could provide apartments that were not very poor apartments, we would keep close track on them, on these persons.

Q Do you remember any such persons?

A Yes.

Q Could you give me the name or names of such persons?

A I couldn't. I simply do not remember the man's name.

Q One person?

A One person. These are things we haven't dealt with now for two years, a year and a half and his name has slipped me. I can describe him to you. I can tell you approximately where his office is.

Q You're saying there was one landlord in the City of New York from whom you could get apartments?

A Yes. We found one particular landlord who was extremely cooperative, who understood what it was that we wanted and who was willing to rent to our clients.

He had a fair number of apartments and they were in excellent condition.

Q Where was he located? Do you remember that?

A Yes. He was located on the east side in, I believe, the 80's.

MISS BALEN: I have no further questions.

THE COURT: I wonder if I might ask a question or two.

This "supplementation." I'd just like to understand that. Is that supplementary to earnings?

THE WITNESS: Yes. Supplementary to earnings. In other words, if you have a family working on the basic wage scale, the minimum wage, and if they have four children and a high rental, they will not be able to make it on a minimum wage, according to welfare standards.

In other words, they would come over. The welfare grant would be more than the earnings grant.

THE COURT: In an appropriate case, you would get them a supplement?

THE WITNESS: In an appropriate case, they would get a supplement.

THE COURT: Suppose there was a case where there wasn't earned income and the rent was limited to a certain amount?

THE WITNESS: Yes; generally, yes. The rent is limited by these levels of approvals. Now, you're talking about a non-supplementary case and also on a supplementary case, the same thing applies.

THE COURT; Does the supplementary apply to them? In other words, say I coulan't rent an apartment at the going rent and I came to you and I said I couldnt rent, is it the policy of your Agency to grant me a supplement or whatever you call it?

THE WITNESS: You mean right now you're not receiving the supplementation and you want to take it?

THE COURT: I'm not earning any money at all.

THE WITNESS: Oh! You're not earning any money at all?

THE COURT: I'm trying to find an apartment. It's your duty to help me try to find it and I found one or you found one but I

don't have enough money from you to rent that apartment.

THE WITNESS: Well, for one thing, we would have to examine the facts that are at hand:

1. What is wrong with the apartment you're in?

2. Why do you want to move?

THE COURT: Well, just assume the apartment I'm in is uninhabitable.

THE WITNESS: Well, then, we would give consideration to your needs.

THE COURT: You have cases where you have granted additional sums?

THE WITNESS: Oh! Yes. And, particularly, in the hotel cases, we would grant additional moneys because we were suddenly faced with the fact of are we going to keep this family in the hotel and we're paying thousands and thousands of dollars a month? Are we going to put this family into a house where we're going to run $50 or $100 over the limit?

THE COURT: What you're telling me is these levels are not frozen?

THE WITNESS: They are not frozen.

THE COURT: All right.

MR. BRODSKY: May I inquire along the same line?

THE COURT: Yes.

RECROSS-EXAMINATION BY MR. BRODSKY:

Q This supplementary amount you're talking about, does it work like this: If a family earns less than the amount the family would be receiving on welfare?

A Right.

Q Let me finish. Welfare might make up the difference between what the family earns and what welfare would be paying to a non-working family. Isn't that correct?

A Yes. In the supplementation, if the family works but that earned income does not equal what the family would be getting, if they were on welfare, now, naturally, there are some - (interruption)

Q I'm talking about the vast majority of cases.

A I mean there are some expenses, for instance. They are allowed a certain amount for working because they have carfare and other things, yes.

Q So that, justin round numbers, if a man

is earning, say, $200. a month but if the same man, with the same family, would be getting $250 from Welfare if they are not working, then Welfare would give the additional $50?

A The additional $50.

Q They wouldn;t give him any more than the non-working person, would they?

A Yes, except for the working expenses.

Q Except for carfare and something like that? Is that correct?

A Yes.

MR. BRODSKY: Thank you.

MISS BALEN: Your Honor, I have another question for this witness as the result of these additional questions by Mr. Brodsky.

THE COURT: Very well. You may examinine.

REREDIRECT EXAMINATION BY MISS BALEN:

Q Mr. Kopp, do you know what I mean by "income disregard"?

A Yes.

Q Do you know what I mean by "income disregard" as it applies to families, ADC families?

A Yes.

Q Would you tell us what youkknow about

"income disregard," what it means?

A There is a certain amount of income which is disregarded. There is a certain amount of income which is not budgeted. A flat rate. Exactly what those are at the present time, I'm not acquainted with that.

Q Is that over and above the deductions allowed for baby siting and other work related expenses?

A Yes. It's over and above those big major items.

Q So, without doing the calculations and in the exact same group of the individual receiving $250. in welfare payments and earning or getting to work at a level of $200. a month, would he be limited to receiving only $250. from welfare?

A No.

MR. BRODSKY: Just one other thing, if I may, Your Honor?

THE COURT: Yes.

RERECROSS-EXAMINATION BY MR. BRODSKY:

Q When you talk about rent supplements and that testimony you gave - rent approval is what I meant, not rent supplement, the amount of money that a person gets is sent directly to the individual welfare recipient, rather than to the landlord; is that correct?

A Yes.

Q And that amount is sent, that check, with the other benefits; is that correct?

A Yes.

Q And it's up to that person to manage his or her money and spend it in a way they deem fit?

A Yes.

Q You don't tell them every month or every week how to spend their month; is that correct?

A Yes.

Q That is the policy of your Department?

A [illegible] s a standard policy.

MR. BRODSKY: Yes. Thank you.

THE COURT: Nothing else?

MISS BALEN: No.

THE COURT: May he be excused?

MISS BALEN: Yes. He may.

THE COURT: Mr. Kopp, you are excused.

(The witness was excused)

Call your next witness.

MISS BALEN: The plaintiff calls as a next witness Phyllis Spiro.

PHYLLIS SPIRO, after having been first duly sworn, testified as follows:

THE COURT: State your name for the record.

THE WITNESS: Phyllis Spiro.

DIRECT EXAMINATION BY MISS BALEN:

Q Would you state your address, please?

A 304 Avenue X, Brooklyn.

Q Are you employed?

A Yes. I am.

Q How are you employed?

A At present, from May 1st, 1973 to now, I'm a Housing Counsel for the Open Housing Center for the Urban League.

Q Prior to May 1, 1973, were you employed?

A Yes. From April/66 to the end of April/73 I was employed by another program of the Urban League operation, Open City.

Q Now, what are your duties and responsibilities as Housing Counsel for the Open Urban and Housing Center?

A My job is to counsel families that work for companies with whom we have contracts, counsel them in their search for housing and assist them when they meet discrimination in that search.

Q What were your duties and responsibilities when you were employed by Operation Open City?

A I was the Discrimination Specialist for the Brooklyn Office and, in addition, counselling families in their search for housing and I worked with low income families in their search for housing.

Q In your work, do you have any relationship with any government agencies?

A Yes. I have a close working relationship with the City Commission on Human Rights.

Q What is a "close working relationship," Mrs. Spiro?

A I'm empowered to take complaints from complainants and process them on their way to the Commission.

Q In the course of your employment by the New York Urban League from 1966, have you had experience handling complaints of housing discrimination?

A Yes. I have experience, extensive experience.

Q What do you mean by "extensive experience," Mrs. Spiro?

A From April/66 until the present, although primarily at Operation Open City in Brooklyn, thousands of grievances came through our office.

Q What procedure did you follow at Operation Open City?

MR. BRODSKY: Your Honor, here, again, I want to voice my objection because if these grievanes had nothing to do with the Lefrak buildings or Lefrak Organization, I think it has nothing to do with this case.

THE COURT: You have the same objection?

MR. BRODSKY: Yes and your Honor, even if they did come from this witness, the complaints would be in the form of hearsay.

I have no way of cross-examining a witness who may testify about somebody else's complaint, not herein, so my objection here is not only on the grounds that none of this involves a Lefrak Organization but even if it did, through this witness, it would be in the form of hearsay.

As I said, as it was a complaint through somebody else, made to this witness or, perhaps, to somebody else and ultimately translated to this witness, I have no way of cross-examining.

THE COURT: With the understanding that

I may strike it out, I will let you continue.

MR. BRODSKY: I do, your Honor, have a running objection on all of this testimony?

THE COURT: Yes. The same as you had before.

MR. BRODSKY: Thank you.

Q What procedure did you follow at at Operation Open City,in particular, when handling the grievances involving housing discrimination?

A They generally presented their grievances by phone or in person; in my presence, they presented it in person and I suggested the family come into the office.

They would then sit down at my desk and inform me about the apartment that was in question, how they had been pursuing it, whether by telephone or newspaper ads where they had gotten the information that had been given to them and the apartment was no longer available.

It was my job to secure the services of a volunteer white checker and to present themselves in the same family circumstances and that potential complainants visited the premises in question and determine whether, indeed, that apartment was available

or not available. If it followed that the non-white person had been told the apartment was not available and immediately, behind them, the white person was offered the apartment, they were to all intents and purposes no different except in color and I would then take the complaint from the non-white person, have it accompanied by a notarized statement, by the white checker and deliver it to the Commission for processing.

Q Did any of the complainants or grievants, if you prefer to call them that, ever involve any Lefrak buildings, if you know?

A Yes.

MR. BRODSKY: I object to that. If there is a complaint about the Lefrak Organization, it should be through the complainant and not through this witness.

This is the grossest hearsay and I think it shouldn't be heard by the Court. Those complainants are available and they can come to court to testify.

There's no need for a third person to come in here and tell about what somebody else is complaining.

I object. It should not be before the

Court.

MISS BALEN: I asked if a grievance was involved with a Lefrak building.

THE COURT: Even a grievance might be hearsay, you say?

MR. BRODSKY: Of course.

THE COURT: Were you able to get the names?

MISS BALEN: No. Actually not. When we got this information, first of all, it was not acquired for purposes of this case; certainly not in the seven years of complaints and thousands of complaints Miss Spiro has had this.

In the sense it involves housing discrimination, it has the same regularity of practice that any other business or organization has and I submit that Miss Spiro is expert in what that business did and can describe or talk about information she acquired in the course of working in that business.

THE COURT: Do they have a list? Did they keep a list of grievances?

MISS BALEN: I believe there are. Miss Spiro, I believe, has files and records. They

are very voluminous. I'm not attempting to prove there are thousands and thousands of complaints of discrimination.

Ultimately, what I hope to get to with this witness is that she personally has a great deal of experience in housing in New York City and, in particular, housing programs of public welfare recipients and complaints and this is personal experience she acquired in the course of her work.

THE COURT: Now, you are trying to prove, specifically, that Lefrak was involved?

MISS BALEN: Your Honor, the objection has be made that we don't connect any of these witnesses to Lefrak, to the Lefrak Organization. Well, the witness is not going to testify and makes no intention of obtaining complaints before any complaint was raised that this particular question was aimed at Lefrak.

It is only to show, in the course of her experience, which she will relate, she would also have contact with Lefrak, if that is what we were being asked to demonstrate, but that isn't the point of this witness'

testimony.

THE COURT: Well, go ahead and direct your questions. I don't think this would be admissible.

Q Have you ever received or handled any complaints, housing complaints, against welfare recipients?

A Yes.

Q Can you tell us how many complaints you have received?

A Over the course of seven years, literally thousands of grievances were called in or verbalized in person by public assistance recipients, at my office, yes.

Q What did you do, if anything, concerning those complaints?

A If they were in the non-white classification, there was very little I could do. When they were in the white or predominantly white communities, it was my job to determine whether it was, indeed, discrimination against that non-white client because of their receiving public assistance or whether it was rather racial, in that vein, if they had been to visit

a premise, inquired about an apartment and been told that the landlord or the superintendent or the agent did not wish to rent to families on public assistance and I would then send a voluntary white checker who would visit the same premises and say they were receiving public assistance and give the same information to see if public welfare recipients were not acceptable or if it was racial.

Q Were you ever a checker in this sense?

A Yes.

Q What, in particular, was your experience as a checker of discrimination complaints?

A My own experience in checking behind white families was that there were many cases when I would present myself and I was offered the apartment, staying on public assistance. However, the vast majority of cases showed a great deal of difficulty and, in most cases, I would have to present - the word would be a sympathetic kind of source to explain my sad story for being on public assistance and then I would be offered the apartment.

Q Have you ever had contacts with real estate brokers directly out of your experience as a checkor?

A Yes. It's part of my job as a Housing Counsellor and as a discrimination expert to go through newspapers every morning and I've done this from the time I started working in 1966.

I got through the general press, which is The Times, The News, the most local newspapers and there are many in New York City from different communities and ethnic newspapers and my job was to determine what's available on the open market, what the rentals are, where the apartments are and then for families who come in my office, who are not familiar with the newspapers, to let them know what is in the housing market.

Q What did you find as the result of those contacts concerning landlords and brokers concerning public assistance recipients?

A I would say that a very good percentage, perhaps almost half of the landlords I would call, would immediately ask about whether I worked, "Where do you work? You are not on welfare, are you? Because I don't like to rent to families on welfare" and they were very much interested in where I worked and on occasion how much money I earn but one of the financial questions they ask is do I work, where do you work.

Q These were apartments in what areas?

A My calling would be in either the white or predominantly white communities.

Q All in New York City?

A At the Open Housing Center, yes, for all New York City. When I was at the Open Housing Center, it would be Queens to Brooklyn.

Q Based on your experience, was the reason for discrimination, if any, against Puerto Rican public relief assistance recipients?

MR. BRODSKY: I object to that, your Honor, especially on the grounds that I don't think the witness is qualified to give an opinion on this, aside from the objections already noted.

THE COURT: Well, this is an ultimate question, isn't it? You're trying to ask the witness to decide the case.

MISS BALEN: Your Honor, we thought that Mrs. Spiro is an expert in discrimination, that she has specialized knowledge in a particular field.

Now, it's not the kind of a field where you go to graduate school to become an expert

but it is a field which is specialized and which not many people have the extensive experience as does Mrs. Spiro.

We feel that she has shown over a course of seven years she is intimately familiar with housing patters in Brooklyn during that period of time that she contacted thousands of brokers and landlords and she has spoken to thousands of prospective tenants, in particular, welfare recipients and she has verified some of the information, which she has acquired in the course of her work.

This is very much like the process followed by social scientists except this is not a recognized social science discipline.

THE COURT: She can testify as to her experience and findings but you're asking her what her conclusion is.

That would be up to me, wouldn't it?

MISS BALEN: All right. Yes.

THE COURT: Very well. You can ask her what she found to be true in her survey, in her work, in her experience, in the jobs she's outlined.

Q Have you had any findings concerning discrimination against public assistance recipients in Brooklyn as the result of your work or in the City?

MR. BRODSKY: I have the same objection. I think it's the same question.

THE COURT: If you're asking her what experience she had, what facts she developed, why it would be admissible. I'll let it in.

Q Have you, Mrs. Spiro, any findings concerning that matter?

A Based upon my own experience and those of the checkers I sent out?

Q Have you any findings, Mrs. Spiro?

A My findings are that the discrimination is more racial as to public assistance recipients.

MR. BRODSKY: That's not a finding. It's an opinion and I move to strike it.

THE COURT: It might be a fact she knows as she looks back on her background, that as to a larger percentage of blacks and Puerto Ricans on public assistance are concerned.

MISS BALEN: She can testify they were discriminated against, based on her experience and expertise in this area and according to

her voluminous grievances she processed.

THE COURT: I'll let it in. You may proceed.

Q Is there any particular experience or information that you have which you have used to support that finding on which you based that finding?

A What question is that?

Q Is there any particular information you have upon which you based that finding, the finding of discrimination against public assistance recipients is primarily racial?

A My own experience.

Q What was that?

A I acted as a checker, myself, many times over the course of years, behind non-white families who had applied for apartments and had been told they did not rent to public assistance recipients.

Q And you also posed as a public assistance recipient?

A Yes.

Q And did you find, when you went to the landlords they'd rent to you?

A I found they'd rent to me, sometimes with a slight amount of hesitation and sometimes with a great

deal, at which time I would present, as I said before, a sad story about why I was on public assistance.

MISS BALEN: I have no further questions at this time.

THE COURT: Very well.

CROSS-EXAMINATION BY MR. BRODSKY:

Q Mrs. Spiro, I take it what you found is that landlords didn't want to rent to welfare recipients?

A That was not my experience.

Q Your experience was landlords wanted to rent to white welfare recipients?

A I found that to be the case.

Q How many times did you find landlords, from your own personal experience, were willing to rent when you were lying to them and saying, "I'm a public relief recipient"?

A That's what a checker does, yes.

Q You lied and said you were a public relief recipient?

A I presented myself in the same sex as the applicant.

Q You were lying to the landlord?

A Yes.

Q How many times, when you lied to the land-

lord, did he tele you he would rent you an apartment?

A I take it you mean a specific number?

Q Yes.

A Maybe 15 times.

Q How many times did you actually go out and pose as a welfare recipient?

A Over seven years, we're talking about now?

Q Yes.

A Maybe 25, 30 times. There were times when there were no apartments available at all.

Q Were there times when you also went out and posed as a working person?

A Behind a welfare client, no.

I have acted as a checker both behind employed families and public assistance families.

Q So, 30 days? You say you went out about 30 times when you went out behind a welfare recipient and did you give the landlord the same facts that the welfare recipient gave?

In other words, did you say you had the same amount of children and made the same amount of money?

A Money is very rarely discussed but I said I received my money from welfare.

MR. BRODSKY: I have no further questions. I move to strike her testimony on the grounds it has nothing to do with the Lefrak building and the Lefrak Management Corporation.

THE COURT: Well, it might be admissible background. For the present, I will let it in. I have a question. You said 30 times?

THE WITNESS: Yes.

THE COURT: That is your guess?

THE WITNESS: Yes. It is.

THE COURT: How many times out of that did they rent to you when they would not rent to other parties?

THE WITNESS: Keeping in mind, I didn't actually rent the apartment -

THE COURT: I understand.

THE WITNESS: Well, I would leave a deposit provided by the client.

THE COURT: You would go out and rent as a recipient of welfare?

THE WITNESS: Yes.

THE COURT: And you went to rent a specific apartment and you would represent to the landlord or whoever was handling it, the

same factual situation that he had previously turned down, be it black or Puerto Rican?

THE WITNESS: Right.

THE COURT: How many times was it when you did that, that you went through that exercise, were you accepted as a tenant?

THE WITNESS: About half.

THE COURT: Any other questions?

MISS BALEN: No, your Honor.

THE COURT: You may stand up and step aside. Thank you very much.

(The witness was excused)

MISS BALEN: That concludes the witnesses for the plaintiff. However, two days ago your Honor requested additional data concerning a question posed as to choices of residents of New York City for housing.

We have taken steps to obtain that data in a form the Court could use; that is, in excerpts of the book referred to, or the official publication but we have not here an access to a Xerox machine to run off copies.

THE COURT: Suppose you give him a reference to the book and page or the exhibit?

MR. GEMMIANI: They are being Xerox'd at this moment and should be here shortly.

MISS BALEN: I can give you the title of the publication. I have offered it two days ago, an official publication.

THE COURT: Which one is this?

MISS BALEN: Housing and People in New York City, The Housing Survey - It's just been completed and your Honor suggested we take out those parts that might be of interest on that question.

THE COURT: With the exception of hat, as I understand it, you have no further witnesses?

MISS BALEN: Yes and there is one last matter, which would take one second.

We would like to have the consent, consented to already, against Life Realty, marked and offered in evidence.

THE COURT: You mean the consent between the Government and Lefrak?

MISS BALEN: Yes.

THE COURT: That is already in the record, isn't it?

MISS BALEN: Yes. The record has been in the court. We haven't had the opportunity to direct the Court's attention to any particular portion of it, on which we can rely.

THE COURT: You can do that. I suppose I can take judicial notice of that. It's a record of the Court.

MISS BALEN: Thank you. Except for the additional data, that would conclude the plaintiff's case.

THE COURT: Do you rest?

MISS BALEN: We rest.

MR. BRODSKY: Your Honor, I move to dismiss the plaintiff's case on the grounds the plaintiff has not made out a prima facie case of discrimination against blacks or Puerto Ricans.

As I understand what the plaintiff's complaint is, what they are saying is that the Lefrak Organization discriminated against welfare recipients on the grounds they are blacks or Puerto Ricans, that they were members of minority groups, the theory being, as I understand the complaint, that there were more welfare recipients who were members of minority

groups and because welfare recipients, according to the complaint, didn't get apartments in Lefrak buildings.

I know nothing in the law that requires a private landlord to set economic standards which would permit welfare recipients to come into the building, under the standards set by this landlord.

There's no finding it was unreasonable under the circumstances and even if it were, our position is that a private landlord has every right to set any economic standard it so desires and will fill up or keep his buildings empty as the market place fixes the prices that he sets.

There's been no evidence, your Honor, whatsoever, that the rental policies that have been set by the Lefrak Organization were designed to keep out blacks or Puerto Ricans.

As a matter of fact, the only evidence in the record on the subject of whether or not there were blacks or Puerto Ricans in the building is a study made while the consent

decree was in effect, which indicates that the buildings in Brooklyn, approximately half the applicants who applied and got into the building were black so, your Honor, I believe that plaintiffs have not made out a prima facie case on any grounds and on any theory and on any housing statutes or the Constitution and I move to dismiss.

THE COURT: Miss Balen?

MISS BALEN: Your Honor, I uld like to begin by saying, just to dispel any misconceptions with the particular action Mr. Brodsky was referring to, that is, the exhibit of the so-called racial statistics of applications made in Brooklyn, between 1971 and 1973 and leases signed, there is another exhibit which was introduced at the same time, entitled "Supplemental Racial Statistics," which the defendants agree contains accurate statistics which names in that group individuals who reached the application stage in the application process that have to do with filling out application blanks and were rejected far more times than with whites. That is, for every

monthly period, two to four times as many whites were rejected.

We have testimony from three black welfare recipients: One was refused an apartment, according to her testimony because she was a welfare recipient and for no other reason. That this was the reason for the rejection was confirmed and there was testimony to that effect.

In December of '71, the defendant publicly announced that they would apply the 90% rule, which the Court has heard about in much detail, to welfare recipients as well as to everyone else and, in addition, would generally be aimed at welfare recipients, preventing welfare recipients from entering Lefrak Apartments.

This was completely spurious. It never allowed any recipient to enter apartments, nor can it ever so we directed our attention to the 90% rule and thereupon to welfare recipients for the Mack who testified they were not able to qualify under the 90% rule.

We have had testimony to show that the

Welfare Department provides housing and shelter for welfare recipients and also testimony to the effect that the defendants do not consider this fact at all nor did they consider the nature of public assistance, the non-taxable income they might receive.

We have attempted to show one thing in particular with respect to the 90% rule: As to the blanket exclusion policy, it is our claim that welfare recipients are the basis for exclusion as the findings are equivalent to a racial system.

By that I mean that 77% or more, because the numbers are rising, of all public welfare recipients in New York City are black or Puerto Rican, than an infinitesimal proportion of the white population, mostly in the old age assistance category, are included but the majority or a very large portion of the black and Puerto Ricans are on public assistance and we are positive, through our data, that 42% are on ADC alone today.

We have evidence to the effect to demon-

trate that the 90% rule is extremely stringent, that it operates not to insure rent paying ability but to exclude certain individuals with a certain income, that in the process of excluding individuals with incomes less than required by the 90% rule, in that 90% category blacks and Puerto Ricans are excluded, whereas, the same exclusion does not operate as to whites.

We claim the 90% rule, in its generalization, excludes blacks and Puerto Ricans and we have evidence to the effect that the 90% rule is not required to insure rent-paying ability or for any other economic or business purpose, that it can be handled through other economic standards, that there are formulas available to set that standard and a standard could be set which would not exclude hardly any blacks or Puerto Ricans except those in the very lowest earnings income and this would still insure the landlord a reasonable return on his investment and the payment of rent.

Now, I might add, in connection with the operation of the 90% rule that during the

period of time of the consent order we have had some evidence over a two-year period, I might add, that out of seven applications taken in Brooklyn or, rather, there were 67 applications taken in Brooklyn and there were 50 to 100 welfare recipients who inquired about apartments in Lefrak buildings. Based on the testimony of Rita Gelman, the Managing Agent for Brooklyn, some were white and some were black and yet, among the public assistance applications, who filled out the applications, who were physically able to bring in a guarantor, who was able to stand behind them, the blacks were rejected at a much lower rate than whites.

Whites would be accepted two-thirds of the time and rejected one-third of the time.

Now, we have also introduced evidence concerning the housing situation of public relief recipients. Now, I want to make clear we are not doing this because we believe the Lefrak Organization alone caused that situation. Clearly, there were hundreds of years that caused it. Nor do we contend

that the single 90% rule pertaining to apartments in New York City caused it. What we do claim is the 90% rule, together with the requirement for a guarantor, was a barrier for large numbers of blacks and Puerto Ricans in New York City and did not act as the same barrier for whites.

The consequence is that those excluded by these rules are not able to escape; that is, they are not given an option on other housing.

The defendants would say the landlord can set his economic standards any way he wants to. Why should he rent to welfare recipients?

I submit it's a different situation and it becomes arbitrary and irrational in excluding.

Again, to get back to the oft-repeated statement, that in a particular two-year period, when the defendants were being monitored by the Justice Department in great detail, in that period in Brooklyn and apartments were rented to, roughly, 600 blacks, there has been no implementation whatever and I want to emphasize that condition before or after

the particular consent order nor was there any evidence whatever and I don't know of its existence as to the racial composition of the tenants in defendant's buildings in Queens which are equal in number to those in Brooklyn and in other boroughs where they are located.

This is particularly important because the racial statistics which we have not been able to introduce, in part, demonstrated that Queens is an almost white borough.

Brooklyn, on the other hand, has blacks and whites in residences there in substantial numbers.

The whites still predominate so I submit it would be very interesting to see the racial composition of the Queens buildings and until we have such data, we cannot draw any conclusion whatever from the data from Brooklyn.

We are not here to show Lefrak did not rent to blacks. We are trying to show they used a ruling that discriminates and discriminates irrationally.

It discriminates on its face and by any tests when it excludes blacks and Puerto

Ricans in New York City and it is one barrier which prevents them from getting apartments.

I would particularly like to draw the Court's attention to a series of cases as involving public assistance recipients.

The Male case represents the Second Circuit and wasn't able to comment on the plight of New York City public assistance recipients.

According to what the data shows and what the witnesses testified to, we would never have an end to racial ghettos in New York City.

As to the interpretation of legal principles about data and evidence, e would rely particularly on the Parkview Heights case, Parkview Heights against Blackjack, which came out in St. Louis and in an all white suburb of Blackjack.

Blackjack, in St. Louis, wa: completely distinct and had nothing to do with the black regions of St. Louis. However, Blackjack referred to the low income blacks living in St. Louis moving to Blackjack by zoning out a low income housing project.

The issue came up to the 8th Circuit on the question of whether there was a sufficient question in controversy to warrant a complaint and it held the complaint's statistics demonstrated they were severely injured by being forced to live in the near city of St. Louis when Blackjack refused to accept them in its community, which was all white, and aggrevated and contributed to the injury they suffered and, therefore, there was a sufficient case in controversy to proceed to the merits.

I submit in terms of the way we structured the case, the type of evidence we are submitting in our case is very similar to that.

We, of course, rely on the Title 7 cases in which the Supreme Court and many other courts have decided acts of discrimination to be shown by attempts to isolate with barriers in order to allow equal employment opportunities and fair housing oppertunities.

We are not simply relying on the Fair Housing Act, however. We are also making a claim arising out of the Fifth Amendment and in that claim comes the claim of discrimination

of welfare recipients. We have argued through the two-year monitoring of the Justice Department with the rental practices and procedures of the defendants and, in fact, the consent order establishes rental practices and policies in the case against Life Realty, which was decided before this Court in that there is sufficient Government involvement - in fact, very profound Government interest in the actions of the defendant.

With that Government involvement, I believe we may consider the question as to whether the denial of an apartment to a public assistance recipient, because he is a public assistance recipient, is a violation of due process.

Thank you, your Honor.

THE COURT: What is your argument with reference to his state action argument?

MISS BALEN: We have stipulated that we would not raise the question of state action. We were unable to uncover sufficient cases of state action to qualify for bringing in the equal protection clause of the 14th Amendment.

THE COURT: You rely on the Fifth?

MISS BALEN: Yes, your Honor.

THE COURT: And the Fifth is predicated on the Government's case plus your evidence?

MISS BALEN: Yes. It's not just the Government's case. It was the particular actions taken which we felt were analogous to cases and to actions taken by other Government offices and arguments where the Fifth applied, not only as to establishing rental practices and procedures but, also, the monitoring of the way the rental practices and procedures were carried out, the acceptance of the complaint, the negotiated processes concerning the complaint, the receipt of information, all this, I submit, is tremendous Government involvement that was directly involved with the actions complained of here.

THE COURT: Your cases are on the 14th Amendment cases, aren't they?

MISS BALEN: That's right; on the principle that those acts of discrimination which are prohibited by the 14th Amendment, acts of discrimination would also be Barred by the due

process clause of the Fifth Amendment, as applied to the Federal Government.

THE COURT: I don't have any cases on that.

MISS BALEN: We cite one, your Honor, if I may. We cite Powell against Thompson and Schneider against Rice, page 50.

Moreover, we cite particular cases and I suppose the most recent is Simpkins against Moses, Fourth Circuit, which was denied by the Supreme Court in 1964 and, therefore, the straight protection principle applied to the Fifth Amendment context in a racial discrimination case.

THE COURT: Would you like to make any statement, Mr. Brodsky?

MR. BRODSKY: I certainly would, your Honor. First of all, it seems to me, at best, what Miss Balen is doing is something we should not be doing, making categories of people.

Our position, your Honor, is we treat everybody the same and we've always treated everybody the same.

It seems to me if the plaintiff is going to make out a case of discrimination the way to do that is to have some testimony here that whites and blacks are treated differently by the Lefrak Organization, not by landlords in the City of New York.

What Miss Balen wants to do is nothing short of having this Court condone a property revolution, not only in the City of New York but in the United States. That's what she's asking you to do.

I think your Honor said perhaps she's in the wrong forum. If this class of people have a complaint, this kind of a complaint, it should be addressed to the legislature, not to the courts.

Now, specifically, with regard to decisions, we are told to treat everybody the same.

How do we prove discrimination? By bringing in evidence that whites and blacks are treated differently.

Miss Balen brought three people here, all of whom were black, none of whom received

apartments in our building, all of whom couldn't meet the economic requirements that we set.

If she wants to prove discrimination, it seems to me it was necessary for her to bring on evidence that white people, similarly situated, bot apartments in Lefrak buildings.

Then, it seems to me and only then, would she have some kind of a case of racial discrimination and that's what the cases say, as I understand them.

She can bring on three black people and show they did not get apartments and then produce evidence about other landlords, not us, about what they do with welfare recipients and expect the Court, I respectfully suggest, to render an opinion that we have discriminated against blacks.

There is no evidence in this record of discrimination. She admitted there is no state action involved and I respectfully suggest, your Honor, that the other cases Miss Balen is relying on, the Rice case, is no case remotely like this one, that she's relying on, that says on the basis of what we did is dis-

crimination.

As to the Federal Government monitoring, there was no monitoring. We submitted reports to the Federal Government.

The upshot was we had to go on with this case. I respectfully suggest to your Honor, we reached a point - and I say this most respectfully to the Court, where the Court is sitting without a jury - that the plaintiff's case is so frivolous that, in my opinion, and this is a very expensive thing for the defendants to go through - to sit here for three days of trial, to have prepared for this trial, and now to go on in this case on this record, with another day of testimony, then it reaches the point where it becomes burdensome on us to meet this kind of, what I consider to be, a frivolous application with not one stitch of evidence in this record that this landlord discriminated against anybody and I don't think this landlord did.

Miss Balen's witnesses testified they went to landlords in the City of New York but never gave names.

Why she picked on us, when she knows and she admitted here today and in her proof that our buildings are integrated buildings, why she picked on this landlord to have to go through the expense of defending what I call a frivolous case is beyond my wildest imagination but I do ask your Honor not to put us through another day of testimony on this record.

I think she hasn't made out a case of discrimination and I ask your Honor to dismiss this case now.

THE COURT: What about the question of the reasonableness of your rule?

MR. BRODSKY: There's no evidence it is unreasonable, your Honor, none whatever.

THE COURT: On the evidence of this expert, with reference to the application of the rule, the impact of it?

MR. BRODSKY: Nobody said that the rule, as we applied the rule couldn't be applied in the City of New York and in the United States.

THE COURT: That wouldn't matter because somebody else did it. There's no reason why that whole thing might be balanced.

MR. BRODSKY: I think beyond that, your Honor, in what way was that man an expert to tell a landlord, when the man never operated a building, doesn't know anything about expenses of a building, doesn't know anything about when it reaches a point where people don't pay rent and how expensive it is to collect back rent, how expensive it is to dispossess somebody?

Where is that man an authority to say that when a landlord sets a certain rate that the rate is unreasonable? He simply wasn't qualified.

THE COURT: What he did, if I remember, was to take samples and apply them to different categories of persons, classes of persons and he came up with the answer that the rule, if applied, why then none of these people could rent any houses, a large percentage of them couldn't.

Number Two: Your rule, as I read it, doesn't allow for any supplementing. In other words, if a recipient of welfare came to your place and you applied the rule, why you would

take the amount of his money less 10% and it would be 90% and see whether or not 90% of a week's allowance would pay a month's rent. Is that right?

MR. BRODSKY: We would include his rent supplemented in that, yes.

THE COURT: Well, the evidence didn't show that.

MR. BRODSKY: Sorry.

THE COURT: The evidence doesn't show that's in the rule.

MR. BRODSKY: Oh! Yes, your Honor. Nobody testified to the contrary. If you are suggesting, your Honor, that all we do is take the amount of money that a welfare recipient receives,without the rent supplement, I respectfully suggest that's not so."

THE COURT: We're not talking about - perhaps I should not have said supplement. There are special cases when they permit the allowance to be increased, the witness testified.

MR. BRODSKY: Miss Kopp?

THE COURT: Yes. You don't take both into account?

MR. BRODSKY: We most assuredly do if it's ever presented to us. There's no evidence here that any welfare recipient - (interruption)

THE COURT: Where is that in your rule?

MR. BRODSKY: It's in the rule because we'll take into account any amounts of money that she gets.

THE COURT: But he hasn't got it yet. For example, he comes in and you say, "No, you have to have $100." and he only has $75 and he comes back and Welfare says, "OK, we'll give you a supplement," then you're telling him he can't come in?

MR. BRODSKY: No, sir. We don't say that.

THE COURT: He doesn't qualify?

MR. BRODSKY: No. We say, first of all, we say to him, "How much money do you make?" After calculation, "how much money do you get?" It's any amount that he tells us, your Honor. We don't calculate on the basis of the statutes, on the basis of what we think Welfare will do. That isn't the 90% rule.

THE COURT: It looks like you have that in your rule.

MR. BRODSKY: Sorry.

THE COURT: It looks like you'd have that exception in your rule if that did not apply.

MR. BRODSKY: It's not an exception, your Honor. What the rule says is we take into account all the money a person gets.

THE COURT: All he gets now is $100. and you say that's not sufficient?

MR. BRODSKY: No. If he comes in and says, "I'll be getting $100 or $115."

THE COURT: He doesn't know that. He has to find out how much it takes to get it.

MR. BRODSKY: All he has to do is ask us.

THE COURT: Then the two of you the way I understand it, will have to make a showing that he was entitled to an addition.

MR. BRODSKY: We wouldn't have to make a showing. He would have to make a showing, I guess, under the welfare regulations.

If he comes back to us and says, "I've been to welfare and they will give me more money," we'll add it up and see whether or not it comes

under the 90% rule and if it does, he's in."

THE COURT: What about other allowances he might get? Food stamps?

MR. BRODSKY: Nobody ever comes to us, your Honor, and says, "We get food stamps."

THE COURT: All of them get food stamps, don't they?

MR. BRODSKY: They don't come to us.

THE COURT: Your rule is too rigid in that respect, wouldn't it be?

MR. BRODSKY: No, your Honor. If a person came in and said, "We got additional money because of food stamps" or additional money, we will consider that.

THE COURT: Mr. Brodsky, you know these people are getting food stamps?

MR. BRODSKY: Yes.

THE COURT: And you don't take that into consideration?

MR. BRODSKY: I haven't the vaguest idea.

THE COURT: I didn't either, until I read this book (indicating) last night and some of the other documents that are here and it shows they get additional money with

reference to food stamps. I didn't realize it. I've gone and bought groceries myself and I've seen these people in line with me that sometimes take out stamps but I never noticed the percentage. The percentage seems to be pretty high.

MR. BRODSKY: There's nothing in this record, your Honor, nothing whatsoever.

THE COURT: Then you don't make allowances for any medical a person might get.

MR. BRODSKY: I don't know that, your Honor.

THE COURT: We will recess at eleven because of a swearing in ceremony of Mr. Boyd, our new United States Attorney.

For the present, I think you can surmise I'd overrule the motion on account of this. I have some more things I could enumerate that you haven't taken into account.

At any rate, I'd like to hear your testimony so you might get your witnesses together.

(Whereupon, the Court was in recess from 11:05 a.m. to 11:20 a.m.)

MISS BALEN: Your Honor, the data I promised was on the way, the copies have arrived.

THE COURT: I understood you would present that when it arrived.

MISS BALEN: Yes, your Honor. It is here now and I'd like to offer it. First, I'd like to have it marked.

Your Honor, I haven't shown it to the defendant's attorney.

THE COURT: Those are excerpts?

MISS BALEN: Yes. Those are excerpts from an official publication of the City of New York entitled "Housing in New York City."

It is a required study known as "State Housing and Vacancy Study," which is conducted every three years and it contains only census data in this particular volume and I would like the Court to take judicial notice of it. If you like, you can examine the volume.

THE COURT: Did you offer that the other day?

MISS BALEN: Two days ago, yes, your Honor.

THE COURT: Very well. As I indicated then, I'll take judicial notice of it.

MR. BRODSKY: I want to note for the record that I do object to this exhibit.

THE COURT: Yes. I understood you did.

(The excerpt, previously described, was marked Plaintiff's Exhibit 30 for identification)

MISS BALEN: And I'd like to offer it in evidence and ask the Court to take notice of its contents. It's an official publication of the City of New York and it does refer to the census data.

THE COURT: It's verbatim out of this book?

MISS BALEN: Exactly but only those portions which should shed some light on the issue -

MR. BRODSKY: I object. The only way it can be approached is from the process of examining each borough and the position of each borough by race and age, etc. has changed and it is done every three years.

THE COURT: Assuming it is excerpts from the past housing publication in New York City,

I will admit it.

MR. BRODSKY: I respectfully except.

(Plaintiff's Exhibit 30, previously marked for identification, was marked in evidence)

JERRY RICHTER, after having been first duly sworn, testified as follows:

THE COURT: Give your name for the record.

THE WITNESS: Jerry Richter.

MR. BRODSKY: May I proceed, your Honor?

THE COURT: Yes.

DIRECT EXAMINATION BY MR. BRODSKY:

Q Mr. Richter, what is your occupation?

A I'm Vice President of Management.

Q Would you speak up, please, so we can all hear you?

A I'm the Vice President of the Lefrak Management Company.

Q How long have you been Vice President of the Lefrak Management Company?

A In excess of 20 years.

Q How long have you worked for the Lefrak Management Company in one capacity or another?

A Twenty-three years.

Q What are your duties for Lefrak Management?

A I supervise the maintenance renting personnel of all the buildings that we manage for. We manage properties for landlords.

Q How long have you been doing that?

A For 23 years.

Q Where are the rental offices located in places where people go who want to rent apartments in Lefrak buildings?

A The Life Realty Offices have three locations, one at 1799 Flatbush, and 9725 - 64th Road, Regal Park, Queens and one in the complex known as Lefrak City, which is located in Queens.

We also have other renting offices, one located in Mt. Vernon, where the renting organization is CLMC Corporation; one in Hempstead, Long Island, which is also the CLMC Corporation and one in New Jersey, which is the Berg Agency.

That's it.

Q Now, you're familiar, are you not, with the fact that a certain consent decree was made? You've sitting here and you've been listening? You're familiar with a certain decree that has been signed in connection with a different case?

A Yes. I am.

Q Just as a matter of time, before the consent decree came into effect, what economic standards were used by Lefrak Management Corporation when people came in to rent apartments?

A Gross week's salary to a month's rent. They should be equal. We sought an income from the tenants equal to a gross week's salary, equal to a month's rent.

Q After the consent decree came into effect, was there a change in the economic standard?

A Well, the economic standard under the consent decree,-the person's net income per week had to equal 90% of the month's rent.

Q Aside from the economic standard, what other factors, if any, are considered when a prospective tenant comes in and wants to rent an apartment?

A We have an occupancy standard in terms of the number of persons to occupy a specific apartment.

We have certain rules such as no pets in many buildings and we also, through our credit report, would not want someone who is undesirable through other reasons such as a long history of non-payment of rent.

Q You mean in a different building?

A Yes. Prior to this but if they then meet our credit standard, economic standard, and the credit report showed nothing unusual, we would accept them.

Q Now, all the time that you've been working for the Lefrak Management Corporation, have you ever heard of any policy which treats black people differently than white people?

A None.

Q In all the time that you've been working for Lefrak Management Corporation, to your personal knowledge, have there been black tenants in the Lefrak buildings?

A Yes.

Q In all the time that you've been working for the Lefrak Management Corporation, have you differentiated in any way between welfare recipients and any other class of people?

A No.

Q And in all the time that you've been working for the Lefrak Management Corporation, have there been welfare recipients who have applied for apartments and who have been accepted as tenants?

A Yes.

Q Now, as far as the economic standards are concerned, is there any kind of flexibility within the economic standards, either before the consent decree or after?

A No. Sitting in this courtroom, I got the impression that our job was to reject people. It's not our job. We want to rent apartments and where the tenant's personal economic standard may be slightly below the figures we set, we do look to see if we can bend a little because we're anxious to rent apartments.

Q What are the other factors you take into consideration in that regard?

A A person who might make $5 or $10 a week less and worked for the City of New York for 20 years would be considered a good economic risk.

I would give him a little leeway. A person who owned an apartment or home and paid a fee to the bank on time I would consider that as good credit background.

Those were the types of things we would take into consideration. We're anxious to rent and we're not anxious to tell people not to rent.

Q And I take it, if the people met the economic standard, in that event, I guess, he's always

accepted?

A Yes.

Q I suppose in extraordinary circumstances, he won't?

A If they gave figures which are not provable, if they stated facts which, under investigation, proved not to be true.

Q But, otherwise, if they came above the economic standard?

A Oh! No. No question.

Q That would include welfare recipients?

A Anybody.

Q Blacks? Wouldn't it?

A Anybody.

MR. BRODSKY: We have marked Exhibits M and N for identification. These, your Honor, are black applications. We just wanted to put them into evidence through this witness:

1. Exhibit N is the application which we were using before the consent decree came into effect; and

2. Exhibit M, as in "Mary," is the application we were using after the consent decree came into effect.

The only difference, your Honor is that at the Government's request, we would have on Exhibit N a question about a person's race because the Government didn't want to keep a record, as you heard, in Brooklyn for a period of the consent decree.

Q Can you identify, Mr. Richter, Exhibits M and N for us?

A "N" is the application used before and after. We're presently using that now. We do not have the person's race and for the two-year period of the consent decree, "M," as in Mary, was the application used which did indicate the tenant's race and that is an attachment, Attachment A, which was given to all applicants, which stated, in effect, if they didn't want to answer the question as to their race, they didn't have to and pursuant to the Government's request, for them, visually, to put down themselves what they thought the race was.

MR. BRODSKY: I offer Exhibits M and N in evidence, your Honor.

THE COURT: Any objection?

MISS BALEN: No, your Honor.

THE COURT: Admit them.

(Defendant's Exhibits M and N, previously marked for identification as applications for apartments, were marked in evidence)

Q In accordance with the consent decree and during the period it was in effect, did you keep logs of applications and those who were accepted?

A We kept a daily log of applications taken and there was always copies of applications kept.

Q In accordance with the consent decree and the carrying out of the decree, were racial statistics kept with regards to applications taken and leases signed in the Borough of Brooklyn with respect to Lefrak buildings?

A Yes.

Q Did you make a compilation, as far as blacks and other people are concerned, of the applications taken and the leases signed from February 11, 1971 to January 3, 1973?

A Yes. I did.

Q And is Exhibit G an accurate compilation (indicating)?

A Yes.

Q And that's taken from the logs?

A Well, actually applications and logs.

MR. BRODSKY: Exhibit G is already in evidence.

THE COURT: Is there an objection?

MISS BALEN: No, your Honor.

MR. BRODSKY: Your Honor, just so we can take this in sequence. Exhibit G is in evidence. It does show, your Honor, the leases that were signed in this period of time.

There were 1,292 leases signed and of those 630 were black and 662 were others, including Puerto Ricans so that within the 662 we don't know how many but there would be some Puerto Rican people, within that 662.

It represents, your Honor, as far as blacks are concerned, 48.7%.

MISS BALEN: Your Honor, I can see no reason why this has to be repeated in the record. On its face, it contains whatever information is relevent to this case.

THE COURT: I suppose he just did it to save me the trouble.

MR. BRODSKY: Of course, your Honor. I'll just finish the question before I was inter-

rupted.

It shows 48.7% of leases signed in that period of time, leases in Brooklyn were signed by black applicants.

Q How many buildings in Brooklyn are represented by these figures that I've just read?

A I believe 50.

Q Approximately how many apartment units are represented by these figures, apartment units in Brooklyn?

A About 5,000.

Q We have had pre-marked Exhibit P for identification, which is a large number of documents and I'll ask you to identify it, if you would (indicating)?

A Yes.

Q What is it?

A It's a memorandum I gave out on November 27, 1970 to all management personnel to distribute a notice to every superintendent at every location and I not only wanted the notice distributed but I wanted each superintendent to sign his name to one of the copies and return it to me so I'd have a copy signed by every superintendent.

MR. BRODSKY: OK. I'll offer Exhibit P in evidence.

THE COURT: Any objection?

MISS BALEN: Your Honor, I have no objection to the extent they show Mr. Richter may have written such memo but I do object to them as showing they have been received by the individual who signed for them as those individuals are not in the courtroom.

Q Mr. Richter, were these memoranda sent by you through your own people, who are your subordinates, to all tenants in the building?

A We have managing agents who have a select number of buildings they can visit daily or every other day. They went around and personally got the signatures on them.

Q And you are familiar with the names of the superintendents, are you not?

A Yes.

Q And you have been through that to see that they are the names of the superintendents for the buildings?

A Yes.

MR. BRODSKY: I offer it in evidence.

THE COURT: They were made in the regular course of business?

THE WITNESS: Yes.

THE COURT: Very well. We will admit it.

(Various documents held together with a rubber band, previously marked Defendants Exhibit P for identification was marked in evidence)

MR. BRODSKY: Your Honor, it's short enough. May I just read into the record what it says and, of course, they are all the same except for the signature of the superintendent?

May I just read into the record the first one, your Honor?

MISS BALEN: Your Honor, I object. Of whatever value the contents are would be evident from the face of it, for whatever they are worth, which is now in evidence.

THE COURT: He wants to read it to me. Why do you object to that?

MISS BALEN: For one thing, we have no jury.

THE COURT: Do you want me to read it

to myself?

MISS BALEN: Surely, your Honor. I have full confidence that the Court will look at each of the exhibits.

THE COURT: Well, I've been pretty liberal in this regard. You may read it and you may have your exception.

MR. BRODSKY: Thank you. They are all dated November 23, 1970:

"To: All Building Superintendents

"From: Jerry Richter

"In order that there be no misunderstanding, the following policies of the Company are repeated for your information:

"1. Any vacancies in your building is to be shown to applicants without regard to race, color, creed or national origin;

"2. Acceptance of payment or gratuities to influence you in deciding who shall get a vacant apartment is illegal and will not be permitted;

"3. Maintenance and care of apartments

are to be conducted without regard to tenant's race, color, creed or national origin.

"Failure to comply with the above policy may result in your immediate dismissal."

Q At your direction, were similar memoranda sent to superintendents of the buildings over the year?

A Oh! Yes.

Q Mr. Richter, I hand you what has been pre-marked as Exhibit Q for identification (indicating). Will you tell me what that is?

A That's a rent schedule giving a range of rents for different size apartments which I prepared a little over a year ago.

Q Apartments in Lefrak buildings?

A Yes.

MR. BRODSKY: I offer it in evidence, your Honor?

THE COURT: What's the date of it?

MR. BRODSKY: It's not dated.

Q When was it prepared?

A I believe around November of '72. I could

be off slightly but I think that's it.

Q And those rents were generally in existence at that time?

A It would also be the same range of rents today. That didn't change.

Q And before that time?

A Yes. At the time I prepared it and now.

THE COURT: Any objection?

MISS BALEN: Your Honor, if I may look it it. I just got in about 15 minutes ago.

MR. BRODSKY: You've had it since the time of the interrogatories.

MISS BALEN: Your Honor, in this form, I saw it 15 minutes ago.

MR. BRODSKY: You're looking at the wrong thing.

MISS BALEN: Your Honor, it's been admitted. I think it's cluttering the record. It's been admitted.

THE COURT: No. It's not admitted yet.

MISS BALEN: There is an admission in response to a request that evidence was submitted.

THE COURT: He is offering it now. You

don't have any objection?

MISS BALEN: No.

THE COURT: So it will be accepted.

(Defendants Exhibit Q, previously described and marked for identification, was marked in evidence)

Q Mr. Richter, can you tell me what this is, please (indicating)?

A This is a sign that's posted on the bulletin board in the Life Realty office at 1790 Flatbush Avenue. There is a similar sign in that office, although similar signs are posted elsewhere as well. It's very prominently posted.

Q Saying what?

A It gives the occupancy standard.

MR. BRODSKY: I offer it in evidence. We marked it as Exhibit X.

MISS BALEN: Your Honor, I've never seen it.

MR. BRODSKY: It's pre-marked as Exhibit X.

MISS BALEN: Is it marked in some other form?

MR. BRODSKY: I don't know what you mean

by "some other form."

MISS BALEN: What number is this? (indicating)

MR. BRODSKY: "U". I'm sorry.

THE COURT: Any objection?

MISS BALEN: No, your Honor.

THE COURT: Admit it.

(Defendants Exhibit U, previously described, previously marked for identification, was marked in evidence)

Q Mr. Richter, are you the person and have you been for the past several years, the person within the Lefrak Management Corporation who actually approves and signs leases on behalf of Lefrak Management Corporation?

A Yes. I am.

Q I take it, then, that before you actually approved the lease, no lease is entered into with the respective tenant?

A I sign the lease.

Q Would you tell me the procedure that one goes through before a lease is actually signed by you?

A The standards are set by myself. The rent

for the apartment is something I set. The prospective tenant makes out an application. That application is submitted to a credit agency and if that credit agency passes on the credit, meeting our standards, it is then submitted to me, together with the signed lease, for signature.

Q And if the credit agency comes back with a rejection, what do you do?

A Then it's rejected.

Q And if a credit agency comes back with a question mark?

A The rental agency, in dealing with the tenant's application, may feel it still could be considered with 20 years on the job and that it should be accepted.

They will submit it with an explanation to me. I would look at it and if I agree with them, I'll sign it.

Q At the time you are making a decision, signing the lease, did you even have any knowledge as to whether the person is black or white or Puerto Rican or anything else?

A No. I don't see the tenants. All I have are the papers.

Q Does anybody communicate that information to you that the person is black or Puerto Rican or white?

A No. Never.

Q Never?

A Never.

Q In determining a person's or family's income, do you consider the income of both a husband and a wife, if they are both working?

A Yes. We do. We consider all the income from the family.

Q For example, there could be a child working? There could be a mother, father and three children, all working?

A We consider the total.

Q And as far as welfare recipients are concerned?

A The same thing.

Q Now, there are cases, are there not, when a person does not make enough money to meet your economic standards and you look for a guarantor; is that correct?

A Yes.

Q Will you describe some circumstances where

that happens? The kinds of people, for example?

A Well, I could give examples. I'm on a guarantee on two leases, one for my father and my son.

MISS BALEN: Your Honor, unless it has any relevancy to Lefrak Apartments, I would object to it.

MR. BRODSKY: Why don't we stay with guarantors in Lefrak buildings?

THE WITNESS: If a student would apply for an apartment and has no other means, no visibile means of support, we would ask for a guarantor.

He'd bring in a father or uncle who met our standards and we will accept it for him.

Q Or for anyone else?

A Any person who met our economic standards. We would apply the same procedure.

Q Would that apply for the welfare recipient as well?

A It makes no difference. They would be in the same categories.

Q What did you look for?

A Again, we are looking for a guarantor to meetthe same economic rules we set for the tenants to see

if we can put them in the same set of circumstances and we would look for a little more to cover that portion of the rent.

If I could give an example, possibly I could explain it better.

Q OK.

A If the apartment was $200. a month and we're looking for a net income of $180. and the prospective tenant had no income, then we would like for the guarantor to earn enough commensurate with the same circumstances to have a net income of $180. plus a year's rent for that apartment, which would be 180 times 12 on the assumption that he'd have to leave for himself income to be responsible for the rent portion for that apartment, if he'd be called upon on his guarantee.

I hope I'm clear there too. We're slightly flexible if a guarantor made a little bit below, was a homeowner or showed 20 years on the job and we would again consider that a good credit risk and bend slightly to mark it approved.

Q Mr. Richter, you were in court yesterday, were you not, when Miss Balen testified about a telephone conversation she had and attributed it to you?

A Yes. I was.

Q Did that conversation ever take place?

A I don't know.

Q Did you ever have any conversation with any person where you made the statement attributed to you by Miss Balen?

A With the exception of one part of the statement, which referred to a 90% rule, I may very well have discussed our economic standards with Miss Balen and anybody else on the phone. I would not hesitate to say that with regard to the two statements.

I recall, specifically, maybe more than one statement was referred to that we don't desire welfare tenants, which is ridiculous.

Q Did you ever say that to anybody?

A No. I didn't.

Q On the telephone or personally to anyone?

A On the telephone?

Q Or anyplace else"

A The statement was made that we didn't take welfare tenants because they destroyed property, which is untrue.

Q Did you ever say that to anyone personally or on the phone to anybody?

A Never.

MR. BRODSKY: I have no further questions of this witness.

THE COURT: Miss Balen?

CROSS-EXAMINATION BY MISS BALEN:

Q Mr. Richter, you testified that you used the rule of gross income to a month's rent. As to the 90% rule, do you know of any percentage equivalent of that rule?

A I don't know what you mean.

Q Have you ever determined what the numerical percentage equivalent of that rule is, as you stated, a gross week's income to a month's rent?

A I don't understand what you're saying.

Q For example, the 90% rule is stated both in words and in numbers. Was the gross week's income to a month's rent standard ever stated in numbers?

A I consider both standards equal.

Q Would you know whether the standards a gross week's income to a month's rent is equal to the 25% rule?

A The gross week's salary to the month's rent would correspond to what I think is what I refer to as the 25% rule.

Q By the 25% rule, do we understand that

roughly a quarter of one's income would go to one's rent or no more than one-quarter a gross week's salary to a month's rent? Have you ever attempted to evaluate the 90% rule by comparing it to the 25% rule?

A Yes. I thought I said they were the same.

Q Have you ever done the numbers, the figures, the calculations?

A No. I did it from a practical point of view in renting and examining applications and credits of people and I think it's the same.

Q Are you aware that the 90% rule is, in actuality, equal to a 20% rule or less, depending on the amount of deductions?

A I'm not aware of the figures you're saying.

Q You said you never did the calculations?

A No. Of course not.

Q Now, on the question of the equivalent of the 90% rule to the 25% rule, I'd like to give you a hypothetical situation:

Now, for an apartment renting at $200. a month, what income would be required?

A $180.

Q $180.?

A $180. per week.

Q On the basis of a gross week's income to a gross rent standard, how much income would be required?

A $200. per week.

Q Would you state the 90% rule for me?

A The net weekly income should equal 90% of the month's rent.

Q Is "net" the same as "gross"?

A No.

Q Now, the way the 90% rule is actually applied to net income and given the hypothetical of the rent of $200. a month, what would be the income required by the standard of a gross week's income to a month's rent?

A For a $200. a month apartment, the gross income would be $200. a week.

Q And the 90% rule applied to net income, as you stated it, was what?

A It would be $180.

Q What is "net income" precisely?

A The gross income less normal expenses but which net out unusual items before and after.

Q By $180., you mean "net income"?

A Gross income less normal obligations, yes.

Q So, he had enough gross income of $180.?

A Yes, unless there are no deductions.

Q Do you know what the normal deductions are for taxes, assuming this person that we're considering is employed?

A I rely on the credit agency for that.

Q I show you Plaintiff's Exhibits or Defendants Exhibits M and N (indicating). I ask you to look at that and tell me in the area designated for income information what the columns say?

A The final column, "take home pay."

Q Is there anything on this application which refers to income other than "earned income"?

A Yes. It says "other income"

Q Where?

A Under eighth, the third line, it says "gross income," and "other income."

Q What is the final number on it?

A There's a take home pay with a dollar sign and below that, there's another figure for the grand total.

Q Is there any place on that application where it asks: "Do you receive Medicaid"?

A No.

Q Is there any place on that application where it asks if you received food stamps and whether you're employed or not?

A No.

Q Are you familiar with the employment interviews conducted by your rental agents?

A Yes.

Q Is there any time in your interview where they are asked for that?

A They are asked for all sources of income and it's up to the applicant to tell them what the sources are. You see, we don't ask the person if he gets Blue Cross and most people get Blue Cross.

Q Do you ask them if he pays for Blue Cross?

A No. If he has a source of income, he tells us. There is a line for "other income." They can add a page on or people come in and they have no other income but they have bank accounts. That's not listed here.

They proceed to tell us they have stocks or bonds, whatever they have. Then we take a list and produce it on paper. If we don't have enough lines here, we go on the back and another sheet.

Q How is the interview conducted? Do you

know?

A The rental agent sits down with the applicant and goes down it line by line and when they come to that part they ask, "What is your source of income?" And they put down whatever they tell them.

Q Where, in the application, does it show or is there a space for the information about earnings by family members other than a husband and wife?

A This says "wife's income" and "other income."

Q In the applicant's interview as to adding other income, is any explanation given of what "other income" is?

A Yes. They are asked to list other sources of income.

Q If an applicant asks, "What do you mean by 'other income,' would they be given any assistance?

A Yes.

Q And what do you mean by "other income"?

A The rental agent is there to help tenants to fill out an application so it's accepted. They are not there to hurt him. They'll answer any questions he has. They'll be helpful in any area.

Q How often have you visited the rental

office?

A I go in there quite often.

Q How many times in the last month have you witnessed a rental application interview, from beginning to end?

A I haven't sat there to listen to a specific application being taken, from beginning to end. I've walked into offices and seen them taking an application.

I can't say I waited until they completed every item.

Q Let's talk about the guarantor requirement, Mr. Richter. You mentioned the financial requirement for that guarantor. Are there any other requirements by which you measure your eligibility requirements?

A The standards are identical for the applicants except I want the guarantor to have more because I would have to have him meet the rent payment.

Q Would you explain, in addition to the guarantor, the life style consideration? That is, what considerations you consider as to the life style?

A I don't like the words, "life style".

Q Mr. Richter, didn't you use that word?

A The words, "life style"?

Q Yes. With reference to guarantors. You have the deposition at your disposal.

A I would look at the man's background in terms of credit, yes, how long he was on a job and does he have a good credit reference. It's more important.

THE COURT: The "tag" he gave it wouldn't necessarily matter.

MISS BALEN: I'm sorry?

THE COURT: I say if you're looking for a "tag," I suppose, "life style," tags don't matter to me as to what the tag is.

If you're looking for the background of the party, why that's what he's answering.

Q In a deposition conducted in this case on October 31st, do you recall this being asked, this question, and your answer as follows:

"Q When you evaluate guarantors, do you take into consideration their life styles?

"A Oh! Yeah.

"Q How do you evaluate that?

"A Well, it's not an exact science - if the father or mother of an applicant owns their own home, that's pretty solid, something

you hold onto, you would take that into consideration. They may be off a few dollars - in looking over statements, the length of time a person is on a job, things like that, show stability - I certainly would look more favorably on a person working on a job many years making slightly less, than one who came in for a Lefrak Apartment from Cleveland, looking for a job, because that's not stable.

"Q Do you apply that standard also to applicants?

"A Yes. "

Did you subscribe to that testimony?

A Yes.

MR. BRODSKY: Why don't you finish it up, Miss Balen? You only read half the answer. We might as well finish it up.

MISS BALEN: "...the amounts on a W-2 form in a week - all that - that's something I would very much take into consideration."

Q I show you Plaintiff's Exhibit 26 (indicating). Have you ever seen it before, Mr. Richter?

A I don't recall. I might have.

Q In particular, in connection with your Defendant's Exhibit G, the so-called racial statistics, applications taken and leases signed, in Brooklyn, were you also asked to review your records with regard to the accuracy of that data contained in that Exhibit, Exhibit 26?

MR. BRODSKY: Your Honor, Mr. Richter was not asked to do that at that time. We have not objected to the exhibit. I don't believe Mr.Richter had anything to do with it.

We checked it out, not through Mr. Richter, but through another person in the Lefrak Organization.

We believe it's substatially correct but I don't think this witness knows anything about it.

Q Are you familiar with the application log taken in 1971 and 1973 during the period of the consent decree?

A Yes. I prepared the other exhibits previously. I don't recall ever seeing this so I'm nt fa miliar with it.

Q Now, Mr. Richter, would you look at the bottom half of the exhibit, which is entitled, "Reasons

For Rejection," on the second page where you'll find a total column for blacks and a total column for whites which purports to represent the number of those rejected.

Could you read off the numbers, please?

A Where do you want me to start?

Q First, applications for whites for each period of time in the numbers rejected?

A Whites - total rejected: 8, July - September/71 - total rejected blacks: 29; total rejected whites: 8 - July - September/72 - Total blacks rejected: 21; total whites rejected: 12 - October - December/72 - total rejected blacks: 18; total rejected whites: 4.

Q Now, in Plaintiff's or, rather, Defendant's Exhibit U - do you remember it?

A Yes.

Q You testified that the sign was posted in your rental offices. How often have you been in the rental offices since the time the sign was posted?

A You better start with when the sign was posted. That particular sign was posted, I would guess, about three years. I could be off slightly. We always had signs but that particular set of standards

has been up a number of years.

Q How many times have you visited the rental offices, all of them, in those three years?

A A hundred times. I'm guessing at a number. I'm pretty accurate. It might be more.

Q How many times every week do you go to each of these offices?

A I'm out in the field and whenever I'm near a rental office I step in. I live with renting. It's part of my function.

I'm conscious of the renting. I'm in contact with the renting agents every week.

Q Every day?

A Quite often.

Q In their office every day?

A No. I see them at least once a week in person. In all offices, I see the persons in charge at least once a week. By telephone, I could speak to them five times a day.

Q Do you know where the sign was posted in each of the offices?

A Yes. This was on the bulletin board, I believe.

Q Do you know where it was posted at any

given moment in time, at any given office?

A I don't know. I don't recall the exact date. It's posted all the time. My orders are that sign is to be posted seven days a week, all the time.

Q Have you seen it?

A Yes, every time I'm there I've seen it.

Q But you haven't seen it every day?

A No.

Q Do you know if, at any particular moment, if it was obscured by other data?

A No. My specific order was that it would be placed in a prominent position so nobody could miss it.

Q Was this location changed? Is it there every day?

A I can't say I saw it every day but every day I was in the office I saw it.

Q Now, on Defendant's Exhibit P, as it appl es to the contents of this memorandum, I show you it to remind you what is under discussion (indicating). Why did you propose that memorandum?

A I was asked that by my attorney and I can only assume because it's three years ago in that I might have had a complaint and I thought it was time

to redirect a notice from our office telling the people what our policy is so there is no misunderstanding.

I can't say for sure there was a complaint. I can only say that's what initiated it. I sent out similar notices with the same contents.

Q You testified you always rented to public assistance recipients. Have there been records kept that you are familiar with in your organization on the number of recipients taken?

A No.

Q How do you know that you've always taken welfare recipients?

A I had a case with the State Commission on Humar Rights where the complaint was made - I think I was given a list of people in Lefrak City who were on public welfare, public assistance.

Q When was that?

A About a year or two ago.

Q Before the consent order in 1971, did you keep any such records?

A We never kept records.

Q Now, you testified you don't know what the race is of the applicant whose application you see. During the period of the consent order, was this not

noted?

A During the time of the consent order the records weren't kept, except for the logs, in Brooklyn, the applications and the logs; all applications in Brooklyn for that two-year period were kept; that would be as far as race is concerned.

We didn't keep the records. We kept the logs. We compiled it off the logs.

Q Didn't your building keep records in buildings, of tenants, by race?

A Absolutely not.

Q How many buildings, altogether, does your company manage?

A About 115.

Q How many apartments are located in those buildings?

A About seventeen five, I believe.

Q Seventeen thousand five hundred?

A You're talking about New York City alone?

Q Yes. Let's talk about New York City alone.

A Sixteen thousand some. I'm not sure.

Q For how long has the Lefrak Organization or the Management Company been keeping records

of race and ethnic backgrounds of its tenants. I told you we keep it for a two-year period of the applications kept in Brooklyn for the consent decree, at thattime, and not before and not since.

In fact, we took off the application the question of race as soon as the consent decree was terminated.

Q Before the consent decree and after the consent decree, how many tenants did you meet personally?

A Thousands. I don't know exactly the number.

Q Over two or three years?

A Quite a bit.

Q In any given year, how many tenants did you meet, personally?

A You're asking me to speculate.

Q Did you meet all of them?

A Absolutely not.

Q Did you, in each building, did you meet most of them?

A I can't say. I've met tenants. I could say in every building but I can't say I've met them all or what percentage, some more, some less.

Sometimes I spent more time with the people.

Q How many buildings have you visited?

A I visited them all.

Q Between the time of the consent decree and the beginning of this period, now, how many buildings have you visited of 115 buildings, was it?

A I think I visited them all.

Q In the year before the consent decree, how many of these buildings did you visit?

A Again, I would answer within a year's period, I would certainly visit each building at least once.

Q How many tenants in each building would you visit?

A It depends on why I went there. I didn't necessarily go there to meet tenants. Very often, I did meet tenants for various reasons. Sometimes I go to the Maintenance Superintendent to judge its upkeep.

Q And you judge a building by walking through it?

A That's the only way you can judge it.

Q You've mentioned that the records were kept of the buildings in Brooklyn. Have any records

been kept of buildings in Queens?

A No.

Q Do you have any indication of the racial composition of the buildings in Queens right now?

A Only by visual observation.

Q By walking through the buildings and observing what color the faces are?

A Yes. I would be aware.

Q In 1969, between January and July, what was the ethnic and racial combination of your building at 2815 Coyle Street (phonetic spelling)?

A I don't know.

Q For the same period of time, what was the racial and ethnic composition at 3232 Shore Parkway?

A I couldn't tell you that either.

Q For the same period of time, what was the racial and ethnic composition of your building at 665 New York Avenue in Brooklyn?

A I couldn't tell you that either.

Q Yet, you walked through these buildings and looked at the people?

A Yes. You're asking me for exact persons.

Q Do you have any idea?

A Give me a question. Let me see if I can answer it. Give me a specific building.

Q To the best of your knowledge, what is the racial and ethnic composition between January and July of the building at 2815 Coyle Street in Brooklyn?

A It's too difficult to answer the way you're putting it.

Q Think of the building at 2815 Coyle Street.

A I know the building.

Q In 1969, think of yourself having made visits there, if you did.

A Yes.

Q What is the racial and ethnic composition of that building?

A I wouldn't attempt to hazard a guess.

Q Could you do better with the Cornell at New York Avenue?

A No. I wouldn't hazard a guess.

Q What about the Dodge?

A I think that's the name that you used, 950 utland Road - the same answer.

Q Isn't it true and with reference to the building at 950 Rutland Road, that 47 out of 147 apartments were rented to blacks and Puerto Ricans during

the period of time we're discussing? Did it strike you that way?

A No. It's not striking. Why would it be "striking"?

Q Did it strike you? Were you aware of it?

A No. It didn't strike me now to hear it.

Q Were you aware between January and July, 1969 that the building at 2816 Coyle Street in Brooklyn had no blacks and no Puerto Ricans in their occupancy?

MR. BRODSKY: Your Honor, I think the witness has answered the question. The question is: Does he know? That's one thing but the question is put: Are you aware of the fact? That's quite another story.

MISS BALEN: He may answer that he is not.

THE COURT: I thought she asked him if he knew about the building he visited once a year, as he testified.

If he knows, he can answer the question. If he doesn't, he can say so.

A You're asking me the exact percentages, the exact breakdown and I can't give it to you.

Q I'm asking you also about the building at 3232 Shore Parkway - Were you aware, to your knowledge, whether there were any black or Puerto Rican tenants there? That is, in that period of time.

A (No reply was made)

Q Isn't it true there were none, Mr. Richter?

A I don't know that to be true either. Are you aware of how that was prepared, by the way?

Q This, whatever it is, is not in evidence.

THE COURT: Mr. Richter, rely your questions to your counsel. He will bring it out.

THE WITNESS: I'm sorry, your Honor.

THE COURT: We have enough problems with the lawyers without the witness.

THE WITNESS: It won't happen again, your Honor.

Q Mr. Richter, I want you to think about the building at 429 West 46th Street, New York City, between January, 1969 or in January, 1969, and tell me what the racial composition of that building was at that time.

A I don't know.

Q Are you aware it was 50% black and Puerto Rican?

A It's possible. I don't know.

Q When you say, Mr. Richter, that you have always rented to blacks, do you have any idea how many blacks you have always rented to?

A I don't keep numbers.

Q When you say that you have always rented to Puerto Ricans, do you have any idea of numbers of Puerto Ricans you have always rented to?

A No.

Q When you say that, do you mean you have always rented to blacks and Puerto Ricans with respect to a particular building or to all your buildings?

A To all the buildings.

Q Each building has had, do you know, blacks and Puerto Rican tenants?

A I believe so but I can't be sure. You asked me for exact numbers. I have no way of saying, not with proof.

I don't keep records so I can't answer the question.

Q Now, in the course of your job, being carried out in 20 years for the defendant, or, rather, for the Management Company, have you personally had anything to do with credit checks?

A Do I personally make a credit check?

Q No. Have you had anything to do with them?

A Yes. I arranged with the credit company, yes.

Q You mean you set up a credit company?

A I hire a credit company.

It's a business arrangement. I arrange a business arrangement with a credit company.

Q But the individual credit checks, do you have anything to do with them?

A I don't make them, no.

Q Do you have anything to do with requesting it?

A They are requested through my offices, yes.

Q Do you personally ever contact a credit company?

A We pay for it.

Q Do you personally contact a credit company with respect to any application, any particular applicant?

A I might have through the years, yes.

Q Are you familiar with the procedures followed by those who make credit checks? Is that

a procedure set by your office?

A Well, the credit company knows my standards.

Q And what are they?

A Beg your pardon?

Q What are your standards?

A They know our standards and they know our economic standards. At the same time, they know the 90% rule.

Q Do you tell them?

A Yes. I tell them exactly what our standards are.

Q Do you also tell them what to look for, to check up on?

A On the applications, no. That's why I hire them. I don't know what to look for. I'm only looking to verify the application.

Q Do you know whether they look at other credit data from other credit agencies?

A Probably.

Q But you don't know?

A They do.

Q They do?

A Yes.

Q Do they do that in every case?

A I don't know for sure. You'd have to ask them.

Q Have they always done that?

A It's my understanding of the practice that they would check information acquired through various agencies. They'll check out a particular tenant's name through a central agency or a credit agency but I can't be sure. I know it is a practice.

Q Former landlords?

A Oh! Certainly.

Q Former employers?

A Certainly.

Q Bank?

A Yes.

Q Is this done in every case?

A Hopefully. I hope they do. That's why I pay them.

Q On the question of a husband and wife's application is the wife's income also checked?

A Yes.

Q Has this always been true?

A Many years ago, we never considered the wife's income when she was of a child-bearing age, in

considering income but for well over 10 years, we've taken account of it. Too many women work not to consider that. We take into consideration the family income. It could be more than two.

Q In that particular period of 10 years, has the wife's income been subject to a credit check?

A Oh! Sure, unless the man didn't put it down. It's possible for an applicant not to list it if their own income is sufficient. They may only list their own.

It's what they put down that we go by. If they put more than one, we check it

Q Mr. Richter, in connection with - (interruption)

A May I finish that one statement?

Q I'm sorry.

A If the credit man checks the husband and finds them in excess of our economic standards, he may not go further or do a mild treatment for this. He's there to meet minimum requirements, not the maximum.

Q Mr. Richter, in connection with the renting of Lefrak City in Queens, did you have any role in the renting of Lefrak City in Queens?

A Oh! Yes.

Q What was your role in renting of Lefrak City?

A I again set all standards and gave all the orders and accept the rents, what have you.

Q Did applications from blacks come to your attention from Lefrak City?

A The particular application, did it come to my attention?

Q Any one or several applications for black people for Lefrak City.

A It never came to my attention, no, not to my knowledge; unless you refer to a specific case?

Q Did you have a policy in Lefrak City of limiting the number of blacks who could reside in that building, by floor?

A No, ma'am.

Q Don't you think that would be a good policy?

A A good policy in what respect.

Q To limit the number of blacks per floor in Lefrak City?

A I don't know. You're asking an opinion.

Q Did you ever request a particular credit

check on particular black applications for apartments in Lefrak City?

A No.

Q To your knowledge, were stringent credit checks - that is more stringent than normal - ever carried out in the 1960's for applicants for your apartments?

A No.

Q Not ever?

A No.

Q As far as you know, they were all the same?

A Yes.

Q Do you know anything about the maintenance, Mr. Richter, of particular buildings?

A Yes. What do you mean "particular buildings"?

Q Well, a particular building, well, especially in Brooklyn.

A I'm very familiar with the maintenance. Go ahead.

Q I'd like you to consider the Northwestern in 1967 -

A Yes.

Q Do you recall what its maintenance level

was like, at that time, and tell me and compare for me that maintenance level in 1967 to the maintenance level in 1970 of the Northwestern?

A You say "maintenance level"? It should be the same or better than it was in 1967. In fact, the standard set - (interruption)

Q Do you know?

A Yes. I do know. I know the number of help in the building. We had a super and a porter in the building and we still do.

In fact, the help is the same with the exception that we have a guard on duty at night to two in the morning covering the three buildings.

We had the same personnel in the building since the day it opened, which is about 1960 until this day and, in addition, we have a guard that rotates the three locations until the morning.

We have a full maintenance contract seven days a week, that same service for all buildings throughout all out buildings.

We have an oil burner contract covering that seven days a week that covers that location as well as all locations.

We have an exterminator contract. Twice

a month he comes in and with other buildings it was once a month. The Northwestern was higher. In every respect, that building received the same or more treatment in terms of maintenance, in personnel, in expenses and any feature you want as far as outside maintenance goes.

I welcome your examination of our records in that respect. This was brought out before. I'm very familiar with it.

Q How many times did you visit Northwestern in 1967?

A I couldn't possibly tell you that. I said I would visit the buildings over a period of a year. Once would be minimal. It would have to be more than that.

I would try to hit every building. I go to every building. I concentrate on where problems exist and I have to go there more often.

Q Was there a problem in Northwestern?

A In 1967, no.

Q What about 1970?

A Problem in what area?

Q In Northwestern, in the maintenance area?

A As far as I'm concerned, there's never been a maintenance problem in Northwestern.

Q Any other problem in Northwestern that would have made you go there?

A No. We had something about two years ago which didn't refer to maintenance because the case was one of where they wanted 24-hour guard service.

I'll back off that - excuse me - Northwestern wasn't involved.

Q Let's take Purdue. How would you compare maintenance at Purdue in 1968 and '70?

A The maintenance company, in spending money and personnel, gives to the Purdue or the Northwestern as much attention as any other property within our portfolio of management.

That, I can say with an exact science to the extent I pay a superintendent or a porter who maintains and cleans in accord with the way he should. I may have a particular problem, which is our problem or our job, to straighten out or what have you but at no time did we reduce service, which is a requirement of the law.

On May 30/68, which is the date of the Rent Stabilization, you're required to give the same

service as you did in 1968 so in no instance have we spent less money in supplies or manpower in any building.

You can't point to any building and say it's not maintained. If it's due to our personnel, we have to straighten it out and correct it and we do get complaints from time to time, certainly.

Q This has nothing to do with Purdue, what you said?

A Yes. It would apply to Purdue.

Q Did you have problems with Purdue?

A We never had any maintenance problem with Purdue, to my knowledge.

MISS BALEN: If the Court would permit me, I would like to take a minute - off the record.

(Discussion off the record)

Q Mr. Richter, isn't it true that with respect to Lefrak City you personally approved and reviewed every application that came in for a black person?

A I wouldn't say that.

Q How many blacks are living in Lefrak City?

A Quite a few. I couldn't give you exact

numbers.

Q How many apartments does Lefrak City have?

A About forty-six hundred and some odd apartments.

Q What percentage of those apartments are occupied by blacks today?

A Now, this is a rough estimate - I can only do this by walking through Lefrak City and I do meet people walking through Lefrak City and I attend meetings on occasion - I would say about 40%, my rough estimate.

Q What was it five years ago?

A Maybe 20%. This is pure guess work on my part.

Q Now, do you remember an incident having occurred in 1960 or '61 involving a Rose Beverly Jackson?

A That's a familiar name. I think it was a case heard by either the State or City Commissioner on Human Rights.

In any event, whatever case was heard, the case was dismissed.

Q Do you remember any of the details of the case?

A No.

Q From your personal recollection?

A No. I think that was a name of a case we had at some point in time. I don't know.

Q Do you remember anything with Lefrak and a member of the Human Rights Commission concerning Mrs. Jackson with Mr. Lefrak?

A No.

Q Mr. Richter, do you recall a memorandum, dated November 3, 1961, that was circulated within the management of the Lefrak Organization pertaining to desirable socio-economic mixes in your buildings?

A No.

Q Do you recall a memo circulated, dated November 3, 1961, advocating homogenousness in your building?

A Explain that word.

Q That the building should be homogenous as to tenants?

A No.

Q Are you saying there is no such memo?

A To my knowledge? It's under my name.

Q No. Circulated within the Lefrak Organization?

A I've never see such thing, no.

Q Have you a procedure whereby a government agency could guarantee rent for a tenant?

A Do we have a procedure?

Q Yes.

A No. It's in the form that's given out. I know it was prepared under the consent decree. We've never been approached. You asked me that once before and I was a phone call away from producing it, merely by calling up my lawyer and putting together the facts, unless it was signed on the guarantee portion of the lease, which would be legal.

I don't know if a government agency would fit into that category. We have a guarantee portion on the back of each lease, a guarantee the Government would sign. If it would be legally correct I can't answer. I'm a phone call away from my lawyer and I could find out. If the government agency wanted to sign tomorrow, we would agree to that.

MISS BALEN: I have no further questions of this witness at this time.

MR. BRODSKY: Just one or two questions.

REDIRECT EXAMINATION BY MR. BRODSKY:

Q The actual ownership of these buildings that you were talking about, the ownership application

for different buildings is different, isn't it?

A Yes.

Q And the buildings may be owned by one or more separate corporations; is that correct?

A No. Each building, in some cases, two buildings, are owned by a separate company or corporation.

Q The stockholders are different?

A Oh! They vary. They are corporations, individuals, partnerships.

THE COURT: The management is the same?

THE WITNESS: Yes, sir.

MR. BRODSKY: I have no further questions.

THE COURT: Very well. Will you excuse Mr. Richter?

MR. BRODSKY: Yes.

THE COURT: Thank you.

(The witness was excused)

MR. BRODSKY: It is now twenty to one. If your Honor may recall, Miss Balen took up the morning with witnesses.

THE COURT: Do you want to recess now?

MR. BRODSKY: If I may and have the recess until two, I would appreciate it, just

to get my bearings because I thought we were going to start at two.

THE COURT: Very well. We will recess until two o'clock. That will give you an hour and twenty minutes.

MR. BRODSKY: Yes.

(The Court was in recess from 12:40 p.m. to 2:00 p.m.)

THE COURT: Very well, Mr. Brodsky, proceed.

MR. BRODSKY: I'd like to call Mr. Tobier.

EMANUEL TOBIER, after having been first duly sworn, testified as follows:

THE COURT: State your name for the record.

THE WITNESS: Emanuel Tobier.

DIRECT EXAMINATION BY MR. BRODSKY:

Q Mr. Tobier, what is your occupation?

A I'm a Professor of Economics at New York University, Graduate School of Public Administration.

Q How long have you held that position?

A Approximately three years.

Q Would you give the Court your background, please?

A Well, I'm an economist but specializing

in housing and urban complex, city planning.

I've taught for some years and I've been widely employed as a consultant on housing matters and related fields, economic planning, city planning.

Q And your professional experience has been what?

A I've been - you mean my prior positions?

Q For example, I want to go through quickly that you've been a Director, New York University's study?

A Right. I was Chief Economist, Regional Plan Association of New York; Director of NYU Study of Projects; Professor of Economics at City University; Graduate School, Public Employment. I'm currently directing a study of mortgage financing, New York City, for the Housing and Development Administration of the City of New York and another study of senior citizens housing and Planning Council on Impact of the Property Tax on the New York City Neighborhood.

Q You've had many articles published in the field, haven't you?

A Yes. I've been a consultant to a number of organizations in the housing field.

MISS BALEN: Your Honor, at this juncture,

I'd like to note, for the record, certain objections I have with respect to this witness.

I've been informed by Mr. Brodsky that it was his intention to call Mr. Tobier as an expert but although I was given his curriculum by way of books or articles the witness would testify to, it was not extended outside it with respect to this witness.

I'd like to say I don't believe, at this point, that we've had adequate time to prepare for his testimony.

THE COURT: We'll proceed with it. It seems you all can't get along too well. I'm disappointed.

You could stipulate as to the expertise of the witnesses and exchange information and get a little cooperation with one another and things like that.

I've been taught that New York lawyers were the tops in the country.

MR. BRODSKY: Your Honor, I can represent to the Court that the first time we even had Mr. Tobier's name was last Friday.

We didn't even know we were going to use him until last Friday. We decided to use him over the week end but this is a new development to us.

The moment we knew we were going to use Professor Tobier as a witness we informed the other side and gave the other side a copy of Professor Tobier's background the moment we knew it.

THE COURT: When was that?

MR. BRODSKY: I'd say last Friday or Saturday. That's the first time we knew it.

THE WITNESS: The first time we met was Friday.

THE COURT: There's no doubt. I take your word for it.

MR. BRODSKY: I appreciate that. As far as our other expert is concerned, why Miss Balen has known about him since the very first day we've exchanged this information and that's the only reason for the short notice.

THE COURT: You may proceed.

MR. BRODSKY: Thank you.

Q Dr. Tobier, I'm going to show you three documents which have been pre-marked Defendants Exhibits C, D and E for identification and I ask you if you can tell me what those documents are (indicating).

A These refer to studies that were done by the Bureau of Labor Statistics for the New York Metropolitan Area and what they do is provide budget information that a typical family in the New York City area, the kinds of expenditures the typical family in the New York area would have to undertake in order to achieve certain standards of living.

The levels of living are either low, intermediate or high and they are based partly on budgetary practices of families in different situations in the metropolitan area.

Q Are you familiar with the report?

A Yes.

Q Have you studied them?

A Yes.

Q And are you prepared to testify about them?

A Yes.

MR. BRODSKY: I offer them in evidence, your Honor.

THE COURT: Any objections?

MISS BALEN: No.

THE COURT: Admit them.

MR. BRODSKY: For the record, before I said Exhibit C. That's going to be Exhibit L in evidence.

(Bureau of Labor Statistics studies previously described and previously marked Defendants Exhibits D, E L were marked in evidence)

Q Now, Professor Tobier, will you tell me what those three exhibits are, that are now before you? What was done and what conclusions were arrived at, as far as rent is concerned and what income group?

In other words, how was it done? What income groups and what conclusions as to rent there is?

A Since what the Bureau of Labor Statistics does and I'll deal with the question as it relates to the family and what they call "low level of living," which corresponds to about in 1970's annual income of around in the range of around $7,000. in the New York metropolitan area and what the Bureau of Labor Statistics does as part of its survey and consumer habits is to price out the costs of achieving certain standards of

living and in relation to the housing portion what it does, essentially, is look at the rental costs of a certain amount of space and a certain type of housing accommodation and the conclusion it draws is that in the New York area, the larger area, metropolitan area, a household, at this level, would spend between 15% and 16% of its income in the form of shelter and rent for the house, for the space and gas and lighting, etc.

Q Now, are these studies based upon what, actually, families spend or is it based on some kind of hypothesis that's made? How is it done?

A It is, in part, based on spending patterns of families in the metropolitan area and it's based on the assumption that it's a typical family.

Obviously, there's a wide range of spending practices among families but it tries to zero in on the typical family so it is based, to a great extent, on actual spending practices of families, to the extent the typical family is representative.

Q Now, we have pre-marked this as Exhibit W for identification (indicating), Professor Tobier. Can you tell me what that is?

A This is a table prepared from the 1970

census of housing of the Bureau of the Census.

Q Prepared by whom?

A It's prepared by the United States Census Bureau. I prepared it.

Q From what?

A From the 1970 census of housing.

MR. BRODSKY: I offer this in evidenct, your Honor, and I'll ask the witness to explain it.

THE COURT: Any objection?

MISS BALEN: Yes, your Honor. I've had a brief time to look at these tables.

I'd like to say that I believe the chart to be incomplete, seriously, so the Court has the best evidence of this data already in evidence.

THE COURT: You can bring that out on cross-examination so they will be admitted.

MR. BRODSKY: Thank you, your Honor.

(Defendants Exhibit W, a table prepared from the 1970 Census, previously marked for identification, was marked in evidence)

Q Now, Professor Tobier, will you tell me now what Exhibit W is, what you did to prepare it and what, in effect, it says?

A What it does, the first half of it shows the amount of the median rent, gross monthly rent paid by all households, black households and Puerto Rican households, by income class in New York City, what they paid for rents.

The second half of the table shows the relationship between rent and income. Both entries - gross monthly rents - as the value of income.

Q And that's for all households mentioned, black, Puerto Rican and everybody?

A Yes.

Q And black and Puerto Ricans are done separately; is that right?

A Yes. I converted the gross monthly figure into an annual figure and then I divided the annual figure by the income class, by the average income in that class and that's the figure so, in the second half of the table, on the top I say "household income in 1970" with less than $3,000, all households paid 73% of their income for rent and when you go to households earning between six and seven thousand dollars, the share

of their income going for rent, they declined to 18%.

Q That's for all households?

A All households, Puerto Ricans: 17%; and blacks: 21%.

Q And then you show it,-we don't have the chart - but then you show it in different income ranges? Is that right?

A Yes. I examined each income class up to the income class of fifteen-, twenty-five thousand annual income.

Q You also have examined and I gave you a schedule of Lefrak rentals; is that correct?

A Yes.

Q Have you compared that with this chart in which the approximate range with the percentage of income to rent is, what that would be?

Do you want to see the chart?

A I'd like to see the chart.

Q OK. Using Exhibit Q in evidence, see if you can answer that question, Exhibit Q being rent schedules for New York City properties for the Lefrak buildings.

A Well, the figures on my tables I presented are for all rented households. Now, the figures in the

table you just gave me refer to different size apartments in Lefrak's inventory. Judging from these two tables, the Lefrak minimums are as you might expect, are well in excess of the medians indicated.

Most medians indicated here, except the family higher up in the income - (interruption)

Q And in that regard, the families are black households paying what percentage of their income in rent?

A At the higher income levels?

Q Yes.

A Let's start with income levels above $10,000., black households earning between ten and fifteen thousand dollars.

According to the census they pay about 10% of their income in the form of rent.

Q And from $7,000. to $10,000.?

A It's 13%.

As you can see, as you go down the income levels, the higher proportion of income is paid for rent.

Q Now, we pre-marked this document as Exhibit X for identification. Can you tell me what that is (indicating)?

A This is a table which I also prepared (indicating). It derives from the same source as the first exhibit placed in evidence of the studies of consumer spending habits and what it shows, again, is the relationship between rental costs and the annual cost of the lower budget for a four-person, poor person area, in selected parts of the United States. That is, those areas in which the Bureau of Labor Statistics has undertaken studies and it shows the rental cost, the percentage of total budgets ranged from approximately, from 1970, from 14% in the New York City area to a high of 18% in Hartford.

They are all in that range.

MR. BRODSKY: I offer Exhibit X, marked for identification, in evidence.

THE COURT: Any objection.

MISS BALEN: No.

THE COURT: It will be admitted.

THE WITNESS: It really shows how much of their income working class families, above the poverty line, allocate, can be expected to allocate to housing costs.

(Defendants Exhibit X, previously marked for identification, was

marked in evidence)

Q I'm going to show you Exhibits R and S, previously marked for identification, and ask you, first, if you would explain what Exhibits R and S are. That's the one I'm showing that's on top now (indicating).

A Well - (interruption)

Q First of all, this was prepared by you, was it not?

A No.

Q All right. Tell me what it is.

A This is a chart prepared by you and that I went over. What it does show, first, based on Lefrak's 90% rule, what income households, on a weekly basis, would have to qualify with and the minimum to live in one of the Lefrak Apartments and it does that over a range.

It looks at the lower income required and high income required.

Q The information contained in here is derived, as far as rent schedules are concerned, from Exhibit Q; is that right?

A This is the first half.

Q Yes.

A The second half looks at what the total

rent and benefits that a welfare family would receive if it occupied, at that time, a suitable apartment in one of the Lefrak buildings and an apartment suitable to the size of the family.

Q According to occupancy standards?

A According to Lefrak occupancy standards and the total rent and benefit compensations:

1. The non-sheltered benefits which are administered by the Department of Social Services; and

2. Then the shelter rent compensation, which is equal to the rent that would be charged for a Lefrak Apartment.

Q And that is in here as an addition of the actual rent that is charged in the various Lefrak Apartments along with the statutory amounts that the welfare recipients receive?

A Yes, and the final chart shows the difference in weekly income of Lefrak tenants, non-welfare Lefrak tenants and the discrepancy between what the weekly income of welfare tenants, living in Lefrak Apartments and the weekly income of non-welfare tenants in Lefrak Apartments.

Q And its jurisdiction by the so-called 90% standard by the Lefrak Organization; is that correct?

A Yes.

Q Have you checked all these figures for accuracy?

A Yes.

Q And they all are accurate?

A Yes.

Q Now, Exhibit S for identification is what?

A This shows, for a hypothetical welfare family, living in a Lefrak Apartment, what the relationship would be between his rent and his income.

His income, again, is composed of the same two components:

One is the basic benefits, non-rent benefits and the other is the amount he receives for Lefrak, as rent, for Lefrak Apartments and it shows the rent income.

Let's say, in the average case, it ranges from 70% for families occupying an efficiency apartment, one-person family, to 54% rental income ratios for families occupying a 3-bedroom apartment.

Q In other words, what you're saying in the last figure that you gave, to be precise about it,

is 53.5%?

A Yes.

Q And what you're saying is in that category the welfare recipient would be receiving 53.5% of his income in rent?

A Let's say a 6-person welfare family living in one of the welfare apartments would end up paying about 54% of his total allowance.

MR. BRODSKY: I offer Exhibits R and S in evidence.

THE COURT: Any objection?

MISS BALEN: No, your Honor.

THE COURT: Admit them into evidence.

(Defendants Exhibits R and S, previously marked Exhibits R and S for identification, were marked in evidence)

Q Now, using these charts, Professor Tobier, will you give the Court an idea of the discrepancy between what the difference in dollars is between what the welfare families actually receive and the amounts which they would be required to have received, using the 90% standard, if you can do that?

A I'll do it again. Let me do it for an

average, sort of an in-between figure for a 4-person family.

The shortage, first of all, would be $133. a week; that is, a 4-person welfare family would need an additional $133. weekly to be at the same income level as the non-welfare tenant in the Lefrak Apartment.

Q And then?

A The figure ranges - (interruption)

Q For the average family, using the occupancy standard, why don't you tell us, for a one-person family to round it off?

A It's $95.

Q When you say "95." you mean that person would have to get $95. per week more than he now gets in order to meet the 90% standard?

A Yes, and for a 2-person family, it's $113. weekly; for three persons, it's $122; for four persons, it's $133; and for six persons it's $147.

Q And now, using Exhibit S in evidence, will you tell me again, using the average rentals and the same occupancy standards and the 90% rule, what the rent to income ratios would be for welfare recipients, given their income, if they were living in Lefrak Apartments?

A Do you want me to go over it?

Q Use the average.

A In a 1-person family, rent/income family, it would be 70%.

Q You're rounding out now?

A Again rounding it.

Q Which would mean he would have to pay 70% of his income in rent?

A Out of it, he would have to pay 70% in the form of rent, leaving three for other requirements; a 2-person family would be paying 65%; for a 3-person family, it would be 61%; for a 4-person family, it would be 58%; and for a 6-person family, it would be 54%.

Q Professor Tobier, you have made an average of the 90% rule as applied by the Lefrak Organization, have you not?

A Yes.

Q In your opinion, is it a standard reason?

A Yes. It is.

MR. BRODSKY: No further questions of this witness.

THE COURT: You may proceed.

CROSS-EXAMINATION BY MISS BALEN:

Q Mr. Tobier, how long have you studied the 90% rule as used by the Lefrak Organization?

A Since Friday.

Q How long have you studied these charts, Exhibits R and S?

A Since Saturday. R and S are those long charts (indicating)?

Q Yes.

A Saturday.

Q Did you, yourself, do any research in the preparation of these charts?

A No.

Q Now, you'll have to bear with me, Mr. Tobier, because I saw these charts myself - (interruption)

A I did research in the sense of validating some of the information as to the benefits that are in addition to rent in accordance with Section 130 - 1 - a of the New York State Social Services Law.

Q In other words, you looked at the statute?

A Yes; right.

Q Pardon?

A Yes.

Q Of course, as I was saying I hope you'll

bear with me, Mr. Tobier, because I've just seen these exhibits about 15 minutes ago and I sort of would like to look at it.

I would like you to tell me, for each column, what they are again so I can follow this.

A Sure. Which one do you want to start with?

Q Let's start with R. It says, "Comparison to Lefrak Economic Standards to Welfare Recipients."

A OK.

Q On the left, what does that mean, that column "apartment size"?

A Different size apartments.

Q Where are those apartments located?

A These are in Lefrak buildings. I should say I don't know if they are in Lefrak buildings but these are standard descriptions of apartments.

Q And the next column?

A These are the space standards that the Lefrak Organization stipulates were for occupation of its units.

That is, an efficiency studio apartment - the maximum number of persons that can occupy an apartment. Living in one and one-bedroom apartments

you can have no more than two persons living in them. A junior two-bedroom apartment is for three; and a three-bedroom can have six persons.

Q And the next column, benefits and additions to rent?

A That's the basic non-shelter component that welfare recipients receive, depending on the size of the household.

A one-bedroom family receives a basic non-shelter allowance of $76. and it rises to $206. in the case of a 6-person family.

Q The next column is self-explanatory. Could we go to the column of, well, like, net income calculations? Can you tell me what that is?

A Yes.

That is the minimum income that a household would have to have to qualify for admission for renting one of the Lefrak Apartments.

The net income would have to amount to weekly income of 90% of the rent of that apartment and that weekly income is the principal with exclusions, withholding, federal, state and local taxes, I assume.

Q You assume?

A Yes - No - I don't assume - It's a figure

of speech, manner of speaking. That is, the principal exclusion.

Q Did you calculate these numbers?

A No.

Q Do you know whether that's what you had taken into consideration?

A That is the minimum, what the weekly minimum income is required. The rent determines what the weekly income would have to be.

Q Did you do calculations?

A I calculated as to the accuracy of the figures.

Q And the next two columns have to do with what?

A The Lefrak Apartments rents. According to this information an efficiency apartment rents for as much as $140. or as high as $210. So, those are the low and high figures for each type of apartment and that's the weekly net income.

Implied by that is the weekly net income figure, as implied by that figure and the average is simply taking the two and dividing them by two.

Q Now, we start with the next column, totals then received by month?

A That's for a welfare family. It's benefits. It's non-shelter benefits plus the rent, the amount of money that it would have to receive to rent this apartment in Lefrak.

Q And the next column?

A Total benefits received per week?

Q Yes.

A It's a division of the two by four.

Q You divide by four? Did you divide?

A I did. Yes. It's that idea. To work it out, you have to remember what it was but it comes out to a weekly amount.

Q Divided by four?

A No. It's the benefit plus this divided - wait - let me check that - Yes. Divided by four.

Q Now, the next column?

A That's the low rent plus the benefits and the average is the same.

Q And, again, divided by four?

A Yes.

Q Now, the next column, will you just tell me again so I have an idea of what this chart is about?

The two highest weekly and monthly, what are they?

A If you go back to the Lefrak Apartment's rentals, 90% income rentals, by weekly - that is, a weekly net income calculations of $189. and then you go to the comparable column, to the benefits received, for welfare recipients, in the comparable column and you subtract that seventy-one fifty figure from the one eighty-nine, you come out to the one seventeen figure and that's the difference.

That's the short fall between what a tenant admitted under the 1970 standard is and the weekly benefits received by welfare families are so that it represents additional resources a welfare family would be able to have to rent that high level efficiency apartment unit.

Q I think I understand the next series of columns. Do you have any information or did you have any information concerning what gross or net incomes were required to rent apartments, Lefrak Apartments under the 90% rule?

Do you know which income ranges Lefrak Apartments are rented?

A I don't know what the income distribution is.

Q Do you know anything about tenants in Lefrak Apartments?

A No. In very general terms but nothing more than that. Sort of just about the median income level and somewhat higher than New York City families making upwards of $10,000.

Q Now, in calculating the benefits that a welfare recipient would receive for the chart that was shown you, tell me again what you took into consideration as that welfare recipient's income?

A The size of the household?

Q Yes.

A That's all.

Q And you just checked the Social Service Law?

A Yes.

Q Are you aware of any other source of income besides public assistance available to public assistance recipients?

A Sure. Food stamps, etc.

Q Did you calculate it?

A Did I calculate what that additional income was?

Q Yes.

A Yes. The best estimate I've seen of food stamps is that the amount for a welfare family is about $300. to $400. a year.

That's based on a study, a joint study by the Economics Committee, Representative Griffith's Committee, on a study of New York City of different kinds of welfare benefits within New York City.

Q Do you know that figure is for food stamps for families of different sizes?

A No. I don't know what it is for family sizes. Those are average figures for all families in a certain income class so I imagine it was weighted by the size of the composition of families but I couldn't say.

That was an average figure, $300. There was some additional amount for school lunches, which is also estimated, which would raise the figure.

Q Do you know what that figure was?

A I think the total figure and the school lunch was about $400.

Q Do you know the figure for families of different sizes?

A No.

Q Do you know the circumstances under which food stamps might go higher than the average for a particular family? That is, the amount of benefits?

A Sure. The average means in certain circumstances some would be higher than others. Some would be lower.

Q Do you know the particular circumstances under which that might happen?

A If the food stamps were the average, it would be higher for larger size families and lower for smaller size families.

Q Are you familiar with the Medicare family benefits?

A No.

Q Do you know who is eligible to receive Medicare?

A No.

Q Do you know what is involved by way of benefits through Medicare?

A I have some general idea, yes.

Q Could you tell us what your general idea is?

A According to this study, depending on the circumstances of benefits - I don't recall - it was

somewhere in the five hundred- to a thousand-dollar range.

Q Do you know how much of an individual's medical expenses would be covered by Medicare, if they are receiving Medicare?

A These are average figures. They are not incomes that are identified with particular households in the same way the basic allowances are given to low income families under the Social Security Law.

Some families may receive, depending on their circumstances, considerable subsidy for Medicare, perhaps. Others, perhaps, might receive nothing.

Q Given data on the amount of Medicare and food stamp benefits, could you calculate what the additional benefits might be for families of different sizes?

A Well, I did think of something like that. I would guess a very generous benefit on top of that. For 4-person families, it would be 25%.

Adding 25% to this basic income component would be my rough guess.

Q Is this on your chart, Mr. Tobier?

A No. Not on my chart.

Q Now, Mr. Tobier, are you familiar with

public assistance? That is, the program and the system as it pertains to individuals who are employed?

For one thing, are you aware that individuals, who are employed, can receive public assistance?

A Yes.

Q Are you familiar with the operation of public assistance with regard to those individuals?

A No.

Q As to employed individuals, let me ask you: Were employed individuals on welfare included on your chart?

A No. The figures here are derived from the basics. These are just for rent, the basic shelter allowance.

It doesn't really take into account the economics. I think it doesn't. It would under State.

Q It seems to pertain to those recipients who are not employed; that is, who have public assistance as their full source of income.

Are you aware of a provision of the Social Services Law, since you referred to it before, or any other welfare law that refers to something known as an "income disregard"?

A I've heard the term.

Q Do you know what is meant by the term "income disregard"?

A That, for purposes of income that certain types of income can still be earned without depriving families of benefits under welfare.

Q Do you have any idea of how much over the normal assistance budget a working family could go before becoming ineligible for assistance?

A No.

Q Did you take that into consideration in your chart?

A No.

Q Are you aware, Mr. Tobier, of the methods by which the Department of Social Services, the Welfare Department, pays shelter costs on behalf of recipients?

A Yes.

Q Could you state it for us, please?

A From what point of view? Well, a welfare family, in theory, seeks out appropriate accommodations and it then asks the Department of Social Services to meet those rent requirements and within the Department of Social Services there are several levels of review through which the requests go through.

Q And you,-ultimately, we'll get to the

point of the actual payment - (interruption)

A The Department pays the rent that the tenant gets.

Q Does your office assume the Department will pay the rent to the tenant?

A Yes.

Q For the Lefrak Organization?

A Yes.

Q In budget calculations for welfare recipients, is the shelter allowance, at the present time, paid any differently than what you called the "flat grant"?

A You mean in terms of the recipient?

Q In terms of the budgeting done by the Department of Social Services for a recipient.

A Well, normally, it's ear-marked for rent.

Q Are you familiar with any provisions of any welfare applicable in this city with regard to the situation where a welfare recipient is unable to pay his rent in a given month? Are you aware then of any procedures the Department of Social Services may have to cover that situation?

A Yes. They will pay the rent where the tenant is unable to meet it reasonable.

Q Looking at Exhibit S, percentage of income,

welfare recipients would have to pay for shelter in rental of Lefrak Apartments. Now, Mr. Tobier, on the basis of your previous answer concerning what you did and you did not take into consideration in calculating the income of a public assistance recipient -

A Yes.

Q ...and looking at your various income ratios, did that income part of the ratio represent the actual income of recipients?

Does it actually represent the group of recipients?

A It represents the certain money income that recipients have. There might be additional money income in kind that they will also receive or income from amounts earned from working.

Q Now, do you have any opinion, as an economist, concerning the role of choice in the selection of apartments and rentals by any consumer or rented household?

A "Choice"? What do you mean by "choice"?

Q That is the choice in the situation. Can you tell me if there is such a thing in any given rented household to spend their money on a particular commodity and to spend it in a particular pereentage?

A Well, the choice in an economic sense involves two parts: One is the seller and one is the buyer.

Both buyers and sellers exercise choice and when the two meet on an agreed-upon price, the transaction takes place.

Speaking of choice on one side and speaking of choice on the other, so to speak, of no transaction at all. That's how I understand "choice."

Q Let me ask you it this way -

A If you want to.

Q I mean is it possible in any given renter household, regardless of income size, to decide that it wanted to spend 50% of it income for rent?

A Sure. He can decide that, if he'll find a supplier that's willing to honor the choice; no question.

Q And depending on circumstances, could this be a reasonable choice? You can qualify it, as much as you want.

A There are two kinds of commodities. Maybe I could say it in my terms. If someone decided to spend 50% of his income in operations, yes, I'm sure he will find a supplier that will be willing to give him that since there would be no continuing relationship

between the two, he can take away his operation. In the case of goods that are required, the relationship between a supplier and buyer continuing over a long period of time, the buyer has to be sure that there is sufficient resources in the long run that would permit him to receive the payment for the services he offered so, therefore, he has to see it, he has to examine the relationship, in this case, between rent and income very carefully in order to be sure the occupant will have enough collateral or resources to make his payment over not the next month but over a much longer period of time.

Q Let's go back to what you said before about the Welfare Department paying rent arrears that accrued against a public assistance recipient.

Do working families have that kind of provision available to them?

A You mean non-welfare working families?

Q Yes.

A No.

Q Looking at your rental/income ratios and taking any one of them, they are all very high, of course but let's take the lowest rental for a single family. I mean for a single person it would appear to be 64.6%. If a working person had that rent/income ratio, would

you consider it very high?

A Yes.

Q As applied to public assistance recipients, do you consider it very high?

A Yes.

Q What are the consequences, to your mind, of a very high income ratio for a poor income family?

A 1. For the family, it means they would have to skip on other kinds of purchases. They would have very little left of its total resources for buying non-housing related items;

2. It would mean on the part of the supplier it would create a problem with regard to the risk. The higher the rent/income ratio the greater the risk for the owner of the services.

Q As to the first part of your answer, can I correctly characterize that in the area of choice for an individual family is a choice of how they should allocate their budget?

A Yes. Choice under certain restraints, right.

Q As to the second part, the risk to the landlord, now, with regard to public assistance recipients, in light of what you said about payment of the arrears, would you compare the landlord to a risk for a

public assistance recipient to a working family without relief?

A Which would be fairer?

Q Bearing in mind what you told us, that Welfare pays rent arrears that the working family doesn't get.

A From what you told me now, sure, it would be less risky.

Q Mr. Tobier, I'm going to tell you, or what if I told you that an ADC family that works, that is employed, is entitled to an "income disregard" of the first $30. of every months net income and a third of the remainder now, just on what I've told you, even involving full time employment, could you give some sort of estimate as to how much money might very well be disregarded, how much income.

MR. BRODSKY: I might say, your Honor, we can speculate a lot but there's nothing in the record that says this is indeed a fact. As a matter of fact, the welfare people who were here, as I recall their testimony, said that all they would do is make up the difference between what a welfare recipient gets and what a person is earning, assuming a person is earn-

ing less than what a welfare recipient gets.

The only difference is they would pay for carfare and other work-related expenses so I suppose we can go on all kinds of hypothesis but there's nothing in the record.

MISS BALEN: There was testimony as to a $30. income disregard. He also testified that income is disregarded and not limited to a public assistance recipient, to the budget of one who is not working and that exercise amount would become available and that was testified to yesterday.

However, it's a matter of statutes. It's a matter of the Social Security Act, 42 USC 604.

THE COURT: Is that the income disregard section?

MISS BALEN: Yes, your Honor.

THE COURT: Very well. You may proceed.

Q I want to be as specific as I can with you, if I can do a calculation briefly.

A Can you repeat the question?

Q Yes. I'm asking you as to the effects of the income disregard.

A But you did it in a specific way. What's

the example you gave?

Q I haven't given you a specific example.

I said even without regard to income limits, could you estimate the amount of the extra income that might be available to a welfare family benefiting from income disregard but I'll give you a specific hypothetics in a moment.

I'm going to pose to you the hypothetical of a family with one adult, an ADC family, with one adult working, earning roughly $1[illegible] an hour, earning exactly $1.85 an hour, for a 40-hour week and I calculated the monthly income without regard to taxes, $318.20 and taking off taxes at 20% average, which did not include the state and city taxes - (interruption)

A That's pretty high.

Q I should say less?

A Ten.

Q $280. - $288. would be the net monthly income of that family, income disregard which I'm going to pose to you, which is $30. off the month's income, net, without taxes and a third of the remainder gets taken off and disregarded.

Could you do the calculations for me?

A About a thousand.

Q Over what period of time?

A Over the year. That's about $20 a week, roughly. I have to check it.

Q If I told you that, in addition, for a working family all the baby-sitting or day care expenses were paid, would that increase your estimate of the disregarded income available to a working family on public assistance?

A It wouldn't do anything for the one-person family but for a four-person family, it would.

Q In an ADC family, I guess, it would do something for them?

A Yes.

Q What would it do?

A It depends on what do you you evaluate the baby-sitting expenses at. What is the purpose? Does that give any additional income?

Q At least, they didn't have to spend it out of earnings.

A Who is working? Is the husband working or the wife working?

Q Well, in an ADC situation?

A In any case, the baby-sitting situation would only occur if both parents were working.

Q Or a three-person family?

A Something like a three-person family, sure, with the high figure of baby-sitting, $15. a week, a very high figure.

Q Well, you've got another $70. or $80. Now, what if I told you, to the income disregard of the baby-sitting expenses, all carfare - (interruption)

A You're assuming baby-sitting expenses would be incurred in the absence of the provision of the baby-sitting - you're creating income that is really income in kind available for purchasing power. You can't trade them in and buy, you know.

It isn't like food stamps. Food stamps, at least, are fundable.

Q Tell me if I'm right. A welfare recipient who is working has his income increased by, for example, by baby-sitting expenses?

A His income in kind is increased but you're creating a category of income.

Q But he doesn't have to pay for those out of $288. a month.

A You're assuming he would have paid a great amount for baby-sitting, even if his income was very low, which I think is a dubious assumption but you

can make it, if you want.

Q Pardon me?

A It's a dubious assumption.

Q That a single person family is, you mean?

A Yes.

Q Are you aware of the definition of ADC?

A Yes.

Q Could you tell us what it is?

A Aid. It's a categorical aid to dependent children.

Q How does one qualify for that?

A You have to have dependent children.

Q Any other qualifications?

A Well, I don't know if you call it a qualification but a high proportion of them who are helped are women.

Q Do you recall the qualifications or do you know what the qualifications are? That a child must have been deserted by one or both parents?

A I really didn't think that was the case in New York City.

Q It's the case all over the country.

A I thought the New York City provisions don't. We have families - (interruption)

Q In separate categories?

A Yes. Am I right?

Q Let's talk about ADC couples as distinguished between ADC and ADC UP.

A ADC UP?

Q Yes. For the purpose of our discussion, ADC would mean a normal category with both parents present and ADC UP would be abnormal categories of a deserted child.

ADC would mean with one or both parents employed or unemployed.

Now, we were talking about baby-sitting and whether it would necessitate, in any way, the income available for that family; would it not be a normal expenditure for baby-sitting?

A It would certainly necessitate the income available for the family to some extent; to what extent, I don't know.

Q What if I told you cost of carfare and lunches was also given in an additional grant to working ADC families?

A That would also tend to increase it.

Q Now, with reference to your chart, Exhibit S, percentage of income, could you calculate a rent/income

ratio for me for a working ADC family? That is, for any size apartment, any of the size families, except the first?

A The rent/income ratio - let's take the first column, the rent/income ratio - as you know, you are raising the income base by including these other categories - the rent/income categories would be reduced and I can't estimate by how much it would be reduced but my educated guess would be on the order, at best, of 5% so it would be, instead of 70%, let's say, in the case of a six-person family, from 54% to something close to 50%.

Q Now, with these rent/income ratios calculated, with or without consideration for taxes - (interruption)

A Represent a case of rent per welfare family.

Q Am I correct that you made no deductions?

A No deductions for taxes, no.

Q Your estimate of a 5% difference, would that be if the taxes of a public assistance recipient were paid by the Welfare Department?

A Sure. That would reduce it another percentage point because they pay a very low proportion

of their income in taxes.

Q Now, based on these questions and answers, this testimony we just had concerning the various forms of income available for public relief recipients and the circumstances of a public assistance family, are you offering these tables to us as an accurate picture of anythin - (interruption)

A Yes. I'm sorry. Finish your question.

Q ...of either the percentage of income welfare recipients would have to pay for shelter or is it an accurate comparison of the 90% economic standard received by welfare recipients?

A I think it represents an accurate picture of the rent/income ratio of certain income, disregarding other categories of income, in kind, that a welfare family would have to pay in meeting household expenses.

If you did a more sophisticated study of income and included other items, the rent/income ratio would be reduced to some extent.

Q Are you aware what the actual income/ratio of public assistance recipients is?

A Yes. 37% - I'm sorry - did you want the actual figures?

Q Yes.

A According to the study that's recently been completed by the Department of Social Services, the rent/income ratio in New York City is 37%.

Q Of welfare recipients?

A The average. The median.

Q So, some pay more and some pay less?

A Yes.

Q What's the top income ratio?

A The top they computed is, I think, 40% and over. I don't know the actual - you mean the specifics?

Q I don't know the date you're referring to. Why don't you tell me what it says?

A It's the study done by the Department of Social Services a week ago and that would be the average rent/income ratio, according to this calculation.

It was 37% for welfare recipients in New York City occupying private housing.

Q Do you have that with you?

A Yes. I do; not on the stand but I have it.

MR. BRODSKY: He has it in the back of the courtroom.

THE WITNESS: Yes. If you want it?

MISS BALEN: Would you get that? Would the Court mind if he gets that data for us so he can finish answering those questions?

THE COURT: Very well.

(Mr. Brodsky handed papers to the witness)

Q Will you tell us what is the top rent/income ratio given public assistance families?

A Well, the figure, the only figure I have is this average income/rent ratio for welfare households, by size of households in '73. I don't have the distribution.

Q But I understand in and out of the situation some have to have a high income ratio and some have to have a low?

A Right.

Q From what you told us concerning the method of paying shelter costs for welfare recipients, isn't it true that rent/income ratios have no meaning in the normal market sense in that the rent is paid separate in whatever amounts the recipient has to pay for rent?

A Yes. It's true. I mean, right.

Q Now, turning to the Bureau of Labor Statistics' report of family budgets, would you like to look

at them again while you testify again? Do you have them?

A I do. I have three here.

Q I show you Plaintiff's Exhibit 25 marked for identification and I ask you if you've ever seen it, either in that form or in a larger volume?

A Both.

Q Will you tell us what it is?

A It's a description of how the Bureau of Labor Statistics calculates it, the purpose of their surveys, how they go about compiling it, the accuracy, etc.

Q Are you familiar with its contents?

A Yes.

Q Would you like to keep that before you as you testify?

A All right.

Q I believe you said that the family budgets are prepared for a typical family. Looking on page 70, in the abstract, could you tell us what the typical family is in these budget studies?

A It's a four-person family.

Q Are any more details given about the family in that exhibit?

A Well, there's also an elderly couple household which they compile separate budgets for.

Q Who is in the family, the four-person family?

A A husband and wife and two children.

Q And household? What are their ages?

A A girl of eight and a boy of 13. The husband is 38 and it doesn't give the age of the wife.

Q What does it tell you about the wife?

A She is not employed outside of the home.

Q Now, on the first page, giving the background, do you see the statement at the end of the first paragraph, "They did not represent"?

A "They did not represent the ways in which family income should be spent or the ways in which average families actually spend their incomes."

Well, it's still within the meaning of a typical family.

Q I don't doubt it.

I see in your chart - what's the exhibit number, Mr. Tobier, as to the relationship between rental cost and annual cost in the lower budget?

A I seem to have lost the place.

Q Exhibit X, Mr. Tobier.

A Yes.

MR. BRODSKY: Do you want me to give it to you?

THE WITNESS: Yes.

MR. BRODSKY: Do you want him to use it?

MISS BALEN: Yes. Sorry.

(Mr. Brodsky handed a paper to the witness)

Q On Exhibit X, looking at the data for the New York-New Jersey-Metropolitan Area, it appears as if the Bureau of Labor Statistics projects rental costs of $1,300? Is that by the year?

A Yes.

Q What would that make the rent that that typical family would have to pay?

A Something under $100. a week, $92. a week or so.

Q A week?

A A month.

Q Do you have any information or data concerning the availability of housing accommodations at that level?

A Yes.

Q Do you know, generally, in the rental market

where such apartments occur?

A They did occur in 1970. They occurred in great numbers in New York City.

Q And in what types of buildings?

A They generally occurred in old law structure buildings put up before 1929, smaller, older buildings.

Q What about this typical family of ours, the 38-year-old husband, a wife working and two children, I believe, 13 and eight?

What if they chose to spend more than that for rent because they they didn't want to live in an old law structure?

A They could.

Q Is there any practical deterrent for spending more than $90. a month for rent?

A Practical deterrent for what?

Q Is there any practical deterrent for spending more than $90. a month as opposed to eight-seven?

A $90. instead of eighty-seven?

Q Yes.

A No. I don't see why.

Q What about $100. a month?

A No deterrent. It depends on how they want to allocate it.

Q This typical family, does it have any relationship, assuming you know, to public assistance recipients? Was it constructed as to public assistance recipients?

A No. This typical family would be above the public assistance level.

Q Is it for a public assistance family?

A No.

Q Can you tell if that is the typical public assistance family?

A I would say the public assistance family would have to pay a high proportion of its income for rent.

Q But other than that?

A They are similar in a sense. They are both rented. They both rent, which is part of the assumption behind the BLS figures, the Bureau of Labor Statistics.

The other difference is one is a husband and wife family and the other is not.

The other difference is probably racial.

Q You mean your typical 38-year-old husband,

the wife and children?

A The high proportion of welfare families are black in the New York metropolitan area, black or Puerto Rican and the typical working class family at this income level would have a somewhat lower rent among blacks and Puerto Ricans.

Q Do blacks and Puerto Ricans, to your knowledge, spend more on rents than whites?

A Adjusted for income.

Q I don't understand.

A Well, poor people spend a higher proportion of their income on rent than rich people.

Q And black families, at all levels, do they spend more than whites, middle class, than middle class white men and going through the other income scales?

A Generally, I believe that's the pattern, adjusted for income, black families and Puerto Rican families pay a lower portion of their income for rent.

Q What does "adjusted income" mean?

A Adjusted for income, looking at blacks and whites and Puerto Ricans, within the same income class families.

Take families earning between six and seven

thousand dollars. All households would pay 18% of their income for rent. Black households pay 17% of their income and Puerto Ricans pay - (interruption)

Q You're looking at your average figures, aren't you, Mr. Tobier?

A Yes.

Q Can I have the exhibit number?

MR. BRODSKY: "W."

MISS BALEN: This is Exhibit W? We're dealing with the wrong numbers and the number of households involved.

Q Have you, in any way, compared the ren-paying propensities of black families as compared to whites?

A I don't understand the question.

Q Have you looked at the actual numbers of family-rented households in New York? Have you looked at the data on what they spend for rent?

A Yes.

Q Have you looked at the data of what their incomes are?

A Yes.

Q Have you looked at data that only represents averages?

A I've looked at a lot of data. Most of the data is published in the form of averages. I haven't looked at individuals, if that's your question.

Q In other words, you can't tell us anything right now except what the average income ratios are for blacks, whites and Puerto Ricans?

A You mean as a distribution? How many families pay what proportion of their income for rent?

Q Yes. At different income levels.

A The lower the income the higher the proportion, the higher the payment from their income in rent.

Q With respect to blacks, Puerto Ricans and whites, have you uncovered any similarities or differences?

A I made, again, adjustments to income: Blacks pay a lower portion of their income for rent than whites do.

Q At which income levels?

A At all income levels. The higher the income the greater the discrepancy.

Q Are you looking at something we have in evidence, Mr. Tobier?

A Yes. This exhibit is what? "W".

Q I don't see anything in Exhibit W for white families, on Exhibi W.

A If black households have a lower portion, for "all households," that must mean white households are lower than black households.

Q Not if all households are Puerto Rican households.

A Puerto Ricans amount to a lower portion of their income for rent. You're right. I don't have the white figures down here.

Q So, with respect to comparisons, that you're attempting to make, we aren't able to do that in Exhibit W?

A No. You're right but it is my opinion. Everything isn't in this table. Based on my own knowledge of statistics.

Q Now, I was much interested in your statement that you believe the 90% rule to be reasonable. What do you mean by "reasonable"?

A Well, it's based on a sort of an accepted practice within the real estate field, within the industry that provides rental housing service with relation to differences between incomes and what a household can afford to pay forhousing service.

Q On what do you base your knowledge of the practice in the industry?

A My own work and experience.

Q You've talked to real estate people?

A Well, not that. More of an analysis between the relationship between rents and incomes of different economic classes over a time.

Q The actual income ratios, you said?

A Yes.

Q Have you done that for the 90% rule? That is, correlated with data on rent/income ratios?

A Well, the 90% rule just expresses a relationship between net income and gross income and it corresponds pretty well to around 25%.

It sort of lets us use it as a rule of thumb or bench mark in evaluating the riskiness of renting to different income groups.

Q And 25%, is that a figure you got from looking at rent/income ratios?

A Well, not rent/income ratios. It's sort of when households have a choice, when they rise above a certain income level, you begin to see a pattern and a merging. It's a merging of how much of their

income they are willing to devote to housing and it comes out of that.

That's how it comes about. It is really a rule of themb. That's based on long practice and the way households allocate resources.

It's also reflected in a number of programs, to my knowledge that, you know, reflects that sort of rule of thumb.

It isn't a scientific technique for evaluating the riskiness for renting to a lower income group or a higher income group. It is in the literature as in practice a very long-standing rule of thumb.

Q Let me see if I understand it. When you said it was reasonable, you said that because you felt it was equivalent to the rule of humb and the rule of thumb is reasonable in your mind because it's been used a long time?

A Yes.

Q Are you familiar or having come across in the data you looked at in rent/income data, with what it shows, that 39.1% of New York rented households in 1970 paid more than 25% of their income for rent?

A Yes. The resultant rent is very low for those households.

Q But it's still true?

A Yes.

Q Let's take the 90% rule, Mr. Tobier, and a proposed or hypothetical rental of $200. a month.

Could you tell me how much income that needs Th is, gross income a family would need to rent that apartment?

A For $200. a month?

Q Yes.

A I would guess about thirteen to fourteen thousand dollars.

Q A guess?

A I can't calculate it off hand. I would say it would be about thirteen or fourteen thousand dollars.

Q Let's do it an easier way.

Taking the 25% rule and am I correct in saying the 25% rule is the gross income to rent ratio?

A Rent to gross income.

Q Rent to gross income. Sorry. As measured by the rule of thumb, what would be the gross income required?

A I'd say about twelve to thirteen thousand, somewhere in that area.

Q Would you like to do the calculation rather than guess, Mr. Tobier?

A Sure. It would be 25%.

Q Let's be clear. For a $200. monthly rental to be an income ratio of 25%, that is, rent to gross income then I am asking what is the gross income, gross monthly income is required to rent that apartment?

A It's $9,600.

Q Can you tell me how you did the calculation, please?

A The $2400 is one-fourth of $9600. so the gross monthly income would be that divided by twelve so that would be $800. a month.

Q Gross income?

A Yes. The rule of thumb.

Q On the 90% rule, why don't we have it stated so we know what we're talking about? Would you state it for us please?

A The 90% of the weekly income would have to be 90% of the weekly rent.

Q Would you know whether it is net or gross?

A It's net with taxes were hold.

Q Any other withholdings that you know?

A Yes. It's net, less debts for consumer installment loans, alimony, etc.

Q Giving you the same hypothetical, a rent of $200., what would be the gross income required to rent that apartment, measured by the 90% rule?

A I don't see why I should change the figure.

Q Would you do the calculations?

A If the net is 90% of the gross income, it ..ould still be the same.

Q I'm talking about the net income.

A You want to know what the net income is?

Q Yes. I'm trying to ask you what gross income would be required then when the 90% income is used so we can supply the figure.

A $720. would be the net income required.

Q And the gross?

A Would be $800.

Q Have you done the calculations?

A The net, the 90% gross?

Q How did you arrive at the net?

A The 90% figure?

Q Did you make any deductions?

A An average of 10% from that 90% figure.

Q Tell me again how you think the 90% figure is applied?

A The 90% rents are weekly income - it has to be 90% of the weekly rent (sic).

Q Net income for what period?

A Net weekly income has to be 90% of the monthly rent.

Q Which is it, Mr. Tobier?

A Monthly.

Q And which did you take into consideration when you did your charts?

A Monthly rents.

Q Are you sure?

A Yes.

Q Did you use 90% on the net income figure?

A As I told you, it was the function,-the net income figure would have to be 90% of what the net income figure is. Once you determine the rent, then all you do is take 90% of that and come up with your minimum net weekly income required.

Q Let's go about this a different way.

You already said "measured by a rule of thumb" to rent a $200. apartment you would need $12,000 to $13,000.

Again, using the rental of $200., what is the net income, the net monthly income required to rent that apartment?

A $720.

Q Please do the calculation again or tell me how you did it.

A That would be $824.

Q That's the net income?

A Under this standard.

Q What's the gross standard that's required?

A So the gross would be 10% of that so it would be $900.

Q Mr. Tobia, is the 25% rule and the 90% rule are not the same, are they?

A No. I didn't say they were.

Q Are they equivalent?

A They are close.

Q Are you aware of rent - well, are you able to say what the equivalent in rent/income ratios would be? What is the equivalent rent/income ratio for the 10% rule? Have you done that calculation?

A The equivalent gross/income ratio under the 90% rule?

Q Which applies to net income.

A Right. I can do it right now. It would be 22%.

Q Taking off what?

A Taking the $900. figure that we estimated would be gross income under the 90% rule and the relationship between that $2400. and wait - let me start over again.

Tell me, before you do it again, are you still working on four weeks in a month?

A No. I'm working on 12 months in a year so now we had a gross figure of $900., gross income, and that comes to an income of $10,800. a year and that twenty-four hundred into $10,8000. gives me 22%.

Q Now, you've already said you're familiar with data of 29.1% of rented households spend more than 25% of their incomes on rent. Do you have any similar data on your so-called 22% rule?

A What's my so-called 22% rule?

Q I think you just stated it. You're transforming a 22% rule into net. It produces a rental income of $2200. Now, if you have a very low income and a very high income ratio, you produce a much lower rental.

A I really don't see what you're trying to get me to compare.

Q I want to direct your attention to the data we discussed of rent/income data households and in accordance with what you said, 39.1% of rented households spend more than 25% of their income on rent. Do you know how many rented New York City households spend more than 22% of their income on rent?

A No.

Q Have you thought to do it through calculation?

A No. The data simply isn't available, believe it or not.

Q I show you Plaintiff's Exhibit 2 and ask you if you've ever seen it (indicating)?

A Yes.

Q What is it, please? Would you look at each page?

A These are tables from the United States Census on Housing for New York City.

Q You've seen them before?

A Yes.

Q Will you look at each page, please?

A Yes.

Q Are you still saying there is no data on rent/income ratios that would show how many New York City limited incomes spend more than 22% of their income on rent?

A Yes. The contrast is 20% to 24%. I have no way of breaking down the inside of that.

Q You said it was 20% to 24%?

A Yes. The Census publishes a number of categories of gross percentages of income. The categories are as follows:

Less than 10%; 10% to 14%; 20% to 24%, 25% to 34%; 35% or more.

Q Twenty-five to what?

A Twenty-five to 34%. I can estimate it by simply dividing that class in half.

Q Why would you do that?

A If you want to find out about twenty-two and above.

Q You really don't know because we're dealing with numbers of rented households and that data doesn't give you averages?

A Averages are computed.

Q Let's go back a ways. When you told me you knew something, you had information about rent/income

ratios and you knew that the 25% of thumb was normally used, were you relying on that data of 24% to 34%? That is, that it excluded rented households with those income ratios and not just rent/income ratios?

A The 25% ratio is a rule of thumb in the sense that families above a certain income would allocate their resources in such a way that they wouldn't, willingly, want to spend more than 25% for rent except in some cases, except in certain cases some people would want to spend a very high proportion of their income but would find it very difficult to meet that figure.

Similarly, a housing official would be wary of permitting him to do it. Obviously, there are differences. People move into housing where incomes are higher and find themselves with much lower incomes.

People, very low income people, have to spend a higher proportion of their income because is expensive.

Q Your opinion is that the 25% rule is generally used? You don't get that from rent/income ratios?

A I didn't say I did.

Q Let's do the rough allocation you proposed

and which is to look at the tables of housing, housing characteristics. Tell me how many rented households would you estimate that pay more than 22% of their income for rent?

A 800,000.

Q And what percentage of all New York City rented households is that?

A It's about 40%.

Q Could you do the calculations, please?

A 800,000 to 2,165,000 less 92,000, not computed, gives you about 40%. If you want me to calculate, I'll do it for you but it will take some time.

THE COURT: Miss Balen, if you can, I wish you'd hurry it up.

MISS BALEN: I'm almost finished. I hope the Court understands I haven't had adequate preparation time for this witness since I was only informed on Saturday and I'm very sorry I've taken so much time.

THE WITNESS: Between 35% and 40%.

Q Now, based on your quick calculations on the data you have before you, how many, what percentage of New York City rented households pay more than 25% of their income for rent?

A Thirty to 33%.

Q In determining, in making your decision or in expressing your opinion that the 90% rule was reasonable, did you take into consideration any racial or ethnic data that may have been available to you as to the effect on various groups of that rule?

A No.

Q Did you take into consideration why the rule was set by any particular landlord?

A No. As far as I know, it really is a rule of thumb that extends well back into, you know, into the housing literature and its sort of similar ratios show up a hundred years ago in western Europe and in the United States throughout most of, you know, in the history of budget studies and it keeps reappearing and it has been used for a very long time.

Q Did you check the reasonableness or did you investigate the reasonableness of the 90% rule, as was used by the Lefrak Organization?

A No.

Q Did you inquire as to why it was used, set by the Lefrak Organization?

A I understood it was set as part of a case brought by the Federal Government.

Q Did you sit down with Mr. Lefrak and have a discussion of the economic necessity of the 90% rule?

A No.

MISS BALEN: I have no further questions.

THE COURT: Mr. Brodsky?

MR. BRODSKY: Just a few, your Honor.

EDIRECT EXAMINATION BY MR. BRODSKY:

Q These extra benefits of Medicare for welfare recipients, would that be comparable to something like an employer paying for Blue Cross or Blue Shield for a working person, like fringe benefits, more or less?

A Yes. It is income, in kind, that isn't calculated in either. That isn't really put in most income calculations so to the extent that it appears, in kind, it understates income generally.

Q That is, fringe benefits for working people and so-called, if you could use the term, "fringe benefits" for welfare recipients and you really don't take that into account in any of your studies, do you?

A No. It's parallel to fringe benefits in the non-welfare sector.

Q And we are not considering any of these so-called fringe benefits in the Census Bureau study for working people and all the other studies you looked at?

A Income as a money concept doesn't include benefits from Blue Cross, etc.

Q You were asked some questions about welfare people, actually paying rent and how that would affect your judgment. Now, you understand, do you not, that Welfare doesn't actually pay the rent to the landlord? You understand that? You understand the way it works?

A Yes. The payment is made to the recipient who, as part of his total income, pays it to the landlord

Q Now, the fact there is an amount calculated in that check that goes to the welfare recipient as rent, would that, at all, in your opinion, as an economist, motivate the welfare recipient to pay that exact amount in rent any more - (interruption)

MISS BALEN: Objection, your Honor. Counsel is not an economist.

MR. BRODSKY: If I may finish the question?

THE COURT: You may finish the question.

MR. BRODSKY: Let me back up. Maybe I'll do it by stipulation.

Q You understand that the welfare recipient receives a check every two weeks, correct? A working man may receive a check every two weeks or once a

month. The welfare recipient, as part of the check that he receives, has a specific amount that has been calculated in his benefits for rent. Now, is there any difference in that regard between him and his disposable income then as to the way he would spend his money and the working man who gets a check every week or every month and nobody has specifically said, "A certain amount of this is for rent"?

A Well, I think the point is that the higher the rent income ratio the greater sum, I imagine, for any person. In the event of emergencies or other expenses, there would be, you know, economically, rationally, a strong need or temptation to deep into the larger element.

It's not a matter of whether it's welfare or working class. It's a matter of how high the rent is, as part of the total budget.

You know, it's really like any sort of deferment. If you have a limited amount of resources, deferments, you could cut into what you could defer the longest time in order to meet your most pressing needs.

Your most pressing needs is what would arise on a daily basis.

Q You also count that when and if Welfare pays rent arrears and they start to deduct the arrears

they paid from the welfare recipient's check in the future?

A I understood that.

Q And that, of course, would make it even more difficult for the person who then is getting less money to meet his obligations because he's getting less money; isn't that correct?

A That would be, yes.

Q There was some testimony about 39.1% of rented households in New York City spending more than 25% on rent. Do you remember that?

A Yes.

Q Can you break that down and explain to us how that works for the lowest income family, as far as the actual rent is concerned, rather than as expressed in percentages? Do you know what I mean by that?

A Well, let's say I did. From the census data again with families, let's say, with incomes under three thousand may pay, you know, I guess, virtually all of them pay rents that are in excess of 25%.

Q What are the actual rents?

A Actually rents, according to these figures, come out to, median rents, come out to $91. a month.

Q And that, of course, is lower than any

of the rentals you have for any Lefrak Apartments?

A Yes. If your income is very low, you pay a higher portion of your income on rents but you still have a lower rent-income-paying ability.

Q How does that break down? Where do we get into the class of people who would be able to pay the Lefrak rents according to this Exhibit Q?

A It's difficult to go from one to the other but I would guess it would be around, it would be between the ten and fifteen thousand income class.

Q And, according to the census studies of all houses, these are figures from 1970 and these are figures from 1973 so there's been a considerable inflation since then in rents so I would guess it would be now in the ten to fifteen thousand dollar class.

Q And in that category of Lefrak rentals, which is what we're talking about here, what would you say that black households pay as a percentage of rents?

A I couldn't judge from this. You mean now?

Q Yes.

A According to the census data, they pay 10%. Black households, whose incomes are ten to fifteen thousand, in 1970, here in New York City, paid approximately 10% of their income, on the average, for rent.

Q In all households?

A All households paid 11%; Puerto Rican households, 14%.

Q So, at the very lower end of the actual rent payments, where you get the highest percentage of rents to income ratios,-is that correct?

A Yes.

Q And lower than the actual Lefrak rents?

A As incomes go up, the proportion paid for rents decline sharply.

MR. BRODSKY: Thank you.

THE COURT: Any more questions?

MISS BALEN: Two more, if I may?

RECROSS-EXAMINATION BY MISS BALEN:

Q In this program that you have testified to whereby arrears in rent are paid for public relief recipients, do you know how much is deducted in future payments from the grant?

A No.

Q Can you evaluate, on the basis of what you know, the impact on public recipients' budgets from that?

A No. Just in direction.

Q Do you know that when these deductions

are made, after an advancement of rent, whether any special steps are then taken to ensure that rents are paid?

A I don't really know.

Q Were you aware that when such deductions take place, after a rent advancement is made and paid, after that payments are made on a two-party check basis?

A I understood that to be the case but it was used in a limited number of incidents because of the danger the State runs when two checks go to two parties and the State suffers a loss from the Federal Government, if two 10% checks go to two parties.

Q You're not aware that the State is over the 10% in issuing two-party checks?

A No. It's news to me.

MISS BALKIN: Thank you.

MR. BRODSKY: I have one question.

REREDIRECT EXAMINATION BY MR. BRODSKY:

Q Using this 90% standard and the fact that welfare recipients don't pay taxes, would you say the welfare recipient is treated more liberally than the working person who pays taxes?

A Under the 90% rule, he is given the rent

to be paid Lefrak and is treated more liberally.

MR. BRODSKY: Thank you.

THE COURT: Anything further of this witness?

MISS BALEN: No.

(The witness was excused)

Would you object to a short recess?

THE COURT: Not at all.

(Whereupon, the court was in recess from 4:05 p.m. to 4:15 p.m.)

ROGER STARR, after having been first duly sworn, testified as follows:

THE COURT: State your name for the record.

THE WITNESS: Roger Starr.

DIRECT EXAMINATION BY MR. BRODSKY:

Q Mr. Starr, what is your occupation?

A I'm the Executive Director of the Citizens Housing and Planning Council of New York, Inc.

Q How long have you been the Executive Director of that organization?

A Fifteen years.

Q What is that? What does that organization do?

A That organization is a non-profit civic group which bends its efforts to improving the housing supply for low and middle income families in the City of New York and which tries to obtain more effective city planning in the use of the city resources.

Q Would you tell us what your background is, particularly in relation to housing?

A Well, I've been involved with housing, real estate of some sort since I was in school.

I own no property. I own no rental houses. I'm not interested in any corporation which owns rental housing.

I have been involved in the construction business and for a number of years, beginning in 1952, I was a board member of the Citizens Housing and Planning Council.

I became its active director, as I told you, in 1958. I have served on numerous commissions in investigatory bodies connected with housing here and abroad.

I am a Director of the National Housing Conference. By appointment of the mayor, I served 15 days a year as a Chairman of the Rent Guidelines Board of the City of New York which establishes a rent increase

maximum under the Rent Stabilization Law. I'm an Adjunct Professor of the School of Architecture.

Through the City of New York, I attend a course on Housing in the Metropolitan Area, as anthropologist.

I hold the same title in Pratt Institute in Brooklyn where I teach a similar course in architecture in city planning.

I've written extensively on the subject.

Q Now, Mr. Starr, are you familiar with the income requirements that landlords, more or less, generally have said, historically in the City of New York?

A Yes. I am.

Can you tell us what that is?

A Generally speaking, the owners of buildings in the City of New York required that the tenants seeking occupancy, not expect to pay more than 25% of his cash income as rent.

MISS BALKIN: Your Honor, if I may register my objection on the record at this time, to any such testimony involving conclusions by Mr. Starr?

It has come to my attention that Mr. Starr

is not qualified as an expert to do research surveys or data collection in the area of housing.

In other words, he is not qualified to do interviewing of landlords to assess or amass data and then to interpret it.

I base that statement on the fact that, to my knowledge, Mr. Starr has never attended any graduate educational facilities, has never been trained in any of these techniques and has no special expertise in them.

What is more, the organization with which Mr. Starr is associated is, in effect, a lobby group which does not require specialized information but rather simply to present the point of view of that organization and I would say testimony by Mr. Starr is about what you and I know and the information we can acquire from a syllabus.

THE COURT: He seems to know what the custom is in this area, 25%. All the other witnesses testified to the same thing. It's all cumulative so I don't see any harm in it.

It goes much to one's expertise besides schooling so just because he didn't have a degree from school doesn't indicate he doesn't possess the necessary expertise to testify with reference to these matters but we'll have to play it by ear, as he goes along.

e seems to be qualified.

MISS BALEN: If I may, to make my objection clear, I'm not motivated by snobbishism but, rather, as to a conclusion, that you know what standard has been applied in New York City and if he applies research into the number of landlords in New York City, the number of men applying that standard, the collection of data concerning it over a period of whatever historical period is being studied, such a conclusion cannot be reached, I submit, without such data collection.

THE COURT: We've had three or four witnesses saying exactly the same thing.

MR. BRODSKY: It goes somewhat beyond it. What we're trying to get here is the practical side of the man's experience over the number

of years in this field, your Honor.

THE COURT: You may go ahead.

MISS BALEN: May I have a continuing objection to any conclusions or testimony offered by Mr. Starr?

THE COURT: Sure.

Q Mr. Starr, are you familiar with the federal programs and the rent requirements compared to income that are set by federal programs and the manner in which they are applied?

A I am, sir.

Q Now, can you tell us about that? That is, specifically, with regard to rent/income?

A With respect to the federal public housing program, the program was recently amended at the behest of Senator Brook of the State of Massachusetts, who argued in the Congress that it was unfair to require any tenant in public housing to pay more than 25% of his income for rent and the Federal Government now provides cash subsidies to the Public Housing Authority to the extent that funds are appropriated so that no tenant's rent exceeds 25% of his income.

Under the FHA subsidy program, the FHA 236 Program, the FHA 223 Program, the Federal Government

indicated in its regulations that it did not wish any tenant to be required to pay more than 25% of his or her income as rent and that the rent supplements were to be made available to any tenant who would have been required to pay more than 25% of his or her income as rent.

Those regulations may or may not be universally enforced at the present time because of the scarcity of funds but, nevertheless, those were the regulations.

Q And to the extent there is a subsidy when a person does meet that requirement, that subsidy goes directly to the landlord; isn't that correct?

A These are housing allowances paid to the landlord or in the case of the 236 Program I believe they are paid to the mortgage holder.

Q So that the effect on the tenant, in those circumstances is what economically?

A Well, the tenant's disposable income remains such that he only spends 25% of his cash disposable income on his shelter and has the remaining 75% for availability for his food and clothing and the other necessities and pleasures of life.

Q Do you know why this is done in federal programs?

A Well, sir, going back many years, the social work provisions and the home economist - (interruption)

MISS BALEN: Your Honor, I must enter a new objection with regard to the expertise of Mr. Starr as we seem to be getting into the area of expertise in law and I have not seen that demonstrated in Mr. Starr.

MR. BRODSKY: We're not in law and the reasons why these programs are carried out this way, as to economic reasons and social reasons, are based on Mr. Starr's experience.

THE COURT: I didn't know he asked anything about law or legal requirements.

MR. BRODSKY: I didn't ask him, your Honor.

MISS BALEN: The programs are matters of statutes. They are matters of legislative history, all of which requires expertise for proper interpretation.

THE COURT: You can have an objection, a running objection and exception to all the questions so we won't have all these objections.

Q Go ahead.

A The home economist and social work provisions in New York City, for many years, have studied family budget dispositions and the housing movement in New York City with which I'm intimately familiar, beginning back with Jacob Riis and extending through the nineteen twenties when Al Smith was active in promoting housing legislation in New York City right up to the present day, and studied the family budgeting process and decided how much of a family's income should be spent on its rent.

In New York City legislation, the Mitchell-Lama Law, the New York City Public Housing Law, they provide that a tenant may stay in public housing until his income exceeds six times his rent in the case of a family with fewer than three dependents or seven times his rent in the case of a family with three or four or more dependents.

The average ratio of income to rent in public housing, federal assisted housing today, for non-welfare families, runs approximately 15%.

This represents a long series of investigations as to what families need in order to live and what kind of pleasures they are able to spend their

family budget on.

At the same time, from the point of view of owners, the owners of a building and, implicitly as tenants, it depends on a notice of rental income so the building can be maintained in good condition so that the owner is under pressure to see that the tenant has a reasonable notice of income so that his rent would be payable and with the exception of elderly families or elderly couples and individuals who can afford to pay a higher percentage of their income as rent, the owners have protected themselves by, generally speaking, adopting a rule which, in one form or another, says, "If you have to spend more than a quarter of your income for rent, we don't believe you can safely meet our rental obligations and deal with your family properly here in the City of New York."

Q Now, do you have some experience with welfare recipients in a particular building?

A Yes. I do.

Q Would you explain that?

A In the early 1960's, my organization conducted an experiment with funds provided by wealthy philanthropic people to buy a tenement house - in fact, two tenement houses, to remodel them and operate

them over the years. One, we subsequently sold. The other, we continued to operate. The location of this building is 186 East 2nd Street in the City of New York.

It's a thoroughly rehabilitated tenement to the extent a tenement can be rented in that condition. The rents average $105 and the apartments are all two and a half room apartments.

However, our tenancy is almost entirely welfare tenants. We have a considerable vacancy loss.

Q What do you mean by "vacancy loss"?

A Well, vacancies in operating a building is a loss due to the fact you are unable to collect the rent.

It doesn't necessarily mean the apartment is vacant. It means from the point of view of collecting rents, the apartment is vacant.

We find the people in the building are paying - well, judging from the average welfare allowance in New York City,-they are paying well over 25% of their income and the discrepancy is obvious.

In one month, Marshal's fees ran to $143., which is about 10% of the rent roll that month and that may have been an extraordinary month - (interruption)

Q You said "Marshal's fees". What is

that?

A That's for issuing warrants for eviction of tenants who had not paid their rent.

Now, we used to be able to get second party checks, two-party checks, for the welfare tenants, from the Welfare Department when their tenants were delinquent in their rent payments. This is now a very extraordinary procedure.

The City is under great pressure, financial pressure and investigatory pressure, to cut back on its spending on welfare and the issuance of two-party checks must now be preceded by a waiver on the part of the tenant so further payments from welfare can be evaded to recoup in order to pay the arrears so the obvious fact is that tenants, who have to pay a high percentage of their income for rent and I mean an average in excess of 30% are under very severe pressure.

I would like to go further, if I might?

THE COURT: Don't you think all this has been covered by other witnesses?

MR. BRODSKY: No, because Mr. Starr has had the actual experience in this area. The other witnesses haven't.

THE COURT: They testified to the same

thing.

MR. BRODSKY: Oh! Yes. To pay more and that took away from their food? Here the testimony is, your Honor, that the people aren't paying their rent. In the other testimony, they were.

THE COURT: Well, there's no difference between them.

Whereas, in the other testimony it was that 40% paid, devoted over the 25% ratio to their rent and here's Mr. Starr's testimony saying his people are paying over 25%.

Evidently, the custom of 25% is in the breach rather than being in force but this is to the tune of 40% so my point is while I listened to the historical background and it is interesting, I don't see how that has any particular impact.

MR. BRODSKY: The point has to be rounded out as to whether these people are paying more than 25% of their rent and if it's being paid or failing to pay in apartment buildings where the rent is substantially lower than

in any of the Lefrak buildings. That's number one.

That's the time the percentages go up, and as Mr. Tobier testified, when you get into the area of the actual rent in the Lefrak buildings people are paying 10% of their rent, on the average and you can take the City, as a whole, so when you say it's in the breach, it's been in the breach for welfare tenants, welfare recipients who pay $90. a month in rent, which is not so of people who are paying, in the middle class, of course - (interruption)

THE COURT: Who are involved in this class?

MR. BRODSKY: Welfare recipients.

THE COURT: Why do we have to go all over the lot?

MR. BRODSKY: Because, according to the figures, the welfare recipient, if he has no other income, at least in most cases, a majority of the cases, simply can't afford to be in these buildings because he doesn't have enough money.

THE COURT: I understand your position.

Your expert testified to that.

MR. BRODSKY: I was just going to ask Mr. Starr one more question.

THE COURT: Very well.

Q Mr. Starr, what happens when the welfare recipient reaches a certain percentage of rent/income ratio? Has there been some experience with that in that building as far as ability to pay the rent is concerned?

A Well, I can only say, generally, it is apparent when people have to pay a high percentage of their income for rent.

MR. BRODSKY: OK. I have no further questions.

THE COURT: Very well, Miss Balen.

CROSS-EXAMINATION BY MISS BALEN:

Q Mr. Starr, you kept saying "we operated the tenement at 186 East 2nd Street in New York City." Who did you include in "we"?

A Cohen-Strauss Renewal and Rehabilitation Corporation (phonetic spelling).

Q What did you have to do with that?

A I'm the President of it.

Q What did you have to do with the actual operation of the tenement?

A In the early days, I was there all the time. I helped to supervise the maintenance and rehabilitatimn and since that time I visited the building and I go over the accounts and I discussed the problems with the managing agent.

Q How many apartments are in that building?

A Sixteen.

Q How many welfare tenants are in that building?

A Well, the welfare recipients, the tenants - beg your pardon?

Q How many units are occupied by welfare recipients, of those 16?

A I believe, at the present time, 14 are welfare recipients. Some are on welfare and others are getting supplemental assistance.

Q I think, as I recall, you mentioned a study had been done of rent/income ratios and you found when they exceeded 30% they had difficulty in meeting rent payments; is that correct?

A No. It is not.

Q Please enlighten me.

A I said nothing about a study being done.

Q You did not do a study?

A I said nothing about a study being done.

Q Did you do a study?

A If by a "study," you mean a formal study, the kind you might do for your academic course, certainly not, Miss Balen.

If you mean did I look at the figures and speak to the managing agents and looked at apartments and tried to understand why we were losing so much money as a result of vacancy losses, that kind of study, I did.

Q For those 14 welfare recipients, how would you go about choosing them to be in your building?

A Usually, they would choose themselves. They saw the vacancy sign outside. It's in the neighborhood in which there are low income families. It's in the Village and they see the vacancy sign and they come in and ask about it and discuss it with the superintendent.

Q So you would not do a credit check on the welfare recipients?

A We certainly did not, having found it very difficult to do a significant credit check. We do it through our managing agent. He tries to call the

previous owner or in cases where the investigator is on a particular case, to find out why the prospective tenant left the previous dwelling unit but it's rather an unreliable means to ascertain it.

Q You don't know whether that unreliable means was followed as to all 14 of your public assistance recipient tenants, do you?

A No. I don't.

Q Mr. Starr, as to the Citizens Council, could you tell me what the organizational structure is?

A Yes. It has a membership and then there is a board of directors elected by its membership. The board of directors elects the officers.

Q What is your source of support, financial support?

A Unfortunately, it's not as great as I'd like it to be.

Q What is it?

A It comes from theater benefits, a luncheon or we get contributions from various individuals ranging in amounts from $5. to $1,000.

Q Are any of your directors, in addition, real estate owners ?

A Some are.

Q How would you describe your membership?

A Our membership is very varied. It includes individuals who are in the housing field; it includes lawyers who practice in the field of housing; it includes architects; it includes legislators; it includes government officials; it includes social workers; it includes settlement houses, who would like to give some publication because we know of them - it's a wide spread, I would say, largely represented by the middle class or the upper middle class.

Q You don't rent or own property yourself, you mentioned. What is the practical experience that you've had with regard to real estate in New York City?

A It started out when I was 12-years-old. My father was a vendor of building materials who ended up during the depression, through not being paid, ended up owning a number of apartment houses.

It was my experience then to go through them with him on vacations and so on to see what was involved and to try to collect rents.

I've been in the construction and housing fields since.

Q Your experience as a building manager was when you were 12-years-old?

A No. That's when it started. I didn't think you wanted my whole life history.

Q No, sir. I want your practical experience with regard to management of real estate.

A I had practical experience in the management of these two apartment houses and as Chairman of the Rent Guidelines Board I'm very deeply involved, looking at the figures of management and consulting with the Bureau of Labor Statistics, in meeting with people who are involved with management as well as with tenant's groups so that I have knowledge, a well-rounded picture of the problems of management in this city.

Q Now, you mentioned the Brooks Amendment 236, Housing, Public Housing, as examples of structures in which rent/income ratios are imposed on the tenants.

Could you tell me in each case what sort of tenants, what class or type of tenants occupy each of those different kinds of projects by income, class?- let's start with that.

A Well, public housing tenants are selected, under federal law, on the basis of state and local regulations.

The Federal Government does not establish any income limits with respect to tenants. These are established by state laws under which local housing authorities operate.

Of course, we're getting into the law here, Miss Halen. Are you sure you want me to answer?

Q I'd appreciate it if you could say if you used statements but I want to know the socio-economic aspects of the tenants involving the Brooks Amendment 236, and the Mitchell-Lama proposal.

A The tenants in public housing are low income families. The tenants in 236 are families whose incomes make them somewhat higher than those living in public housing although there is a strata. The two classes are not mutually exclusive.

The Mitchell-Lama proposal, strangely enough, does it backwards. In other words, the income is a function of the rent rather than the rent be a function of the income of the class which one tries to serve so that we have in this city, at the present, the Mitchell-Lama apartments occupied by people earning, with various supplemental stages, perhaps as little as three or four thousand and people living in Mitchell-Lama apartments

compared as against people earning thirty or forty thousand dollars.

Q Let's talk about public housing, the Brooks Amendment and 236 and Mitchell-Lama as to what your definition of low income is.

A My definition is as vast as anybody's. Low income is that which does not enable a person or family to find standard housing on the market within a reasonable fraction of his total income.

Q Do you know what rents are in public housing and 236 housing?

A In public housing, rents vary, depending on the year in which the housing project was built and also the program under which it was built so that, if I took a guess, I would say it varied from $14. a room up to as high as pretty close to $30.

Q Do you know what the monthly rentals are?

A Well, we can do the arithmetic together. If it's $14. a room and there are five rooms, it's $70. a room. If I got $30. a room a month and five rooms, that's $150.

Q Have you done any calculations concerning the rent/income ratios of tenants in public housing and 236

housing?

A Well, I have figures in my possession which I did not prepare. They were given to me by the New York City Housing Authority. I cannot vouch for their accuracy but the figures indicate for non-welfare families in federal subsidized housing, the average rent/income ratio is approximately 15%.

Q Now, if you take 236 housing or public housing and you consider them and compare them against the rest of the housing starts in New York City, do you feel that there is a similarity or should be a similarity in conclusions that can be drawn about rent/income ratios and tenants?

Let me explain.

A I wish you would.

Q The rent/income ratios, meaning the limits set on public housing and 236 housing, compared with rent/income ratios which would be affected by a number of factors, I assume, in housing outside of 236 and public housing. Now, do you feel that the rent/income ratios in public housing and 236 housing tells us anything about other housing and the tenants and their rent/income ratios and what they can afford to pay and how they budget their money?

A Miss Balen, let me put it to you this way: The reason why the Citizens Housing and Planning Organization and I have devoted so much energy and activity to the supporting of public housing and the supporting of subsidies for housing programs is because we feel that a low income tenant in a family should not be expected to spend a high proportion of his income for rent.

That's the entire motive behind the housing subsidization program so I feel what you're saying to me is that if low income families must live in places that are as expensive, that are outrageously expensive, as the Lefrak buildings, they can't afford to live there on their disposable income.

Q Are you offering the rent/income ratio of public housing and 236 housing as a statement or a conclusion of what tenants can afford to pay?

A They, in my view, they represent the ideal relationship and they come pretty close to the figure that social workers have, over the years, and home economists, to my knowledge, and in my presence, have said is what low income families should pay for shelter and to provide them with a fair share of the rest of the

goods of life.

Q Does the information that you have available to you take into account the operation of a tenant, an individual tenant's choice, the operation of an individual's method of budgeting on any money, the aspirations of an individual for a better type of housing?

A Miss Balen, I'm talking about general rules. I cannot make any rules which deal with any individuals nor can I suggest we can to the New York City Housing Authority or any other operator of buildings that he should have any general rules but try to determine each individual case by what the tenant has for budgeting and monetary allocations.

I don't think we could run the Public Housing System that way nor do I think we could run private housing that way.

Q So when you say the 30% or the 25% rule has been used in New York City, are you saying you advocate its use?

A No. I'd like to see it lower. I'd like to see it down to around 20% or 15%.

Q Do you know, off hand, if it is limited to public assistance people?

A Not only that but we have public assistance people living in 236 housing in apartments which don't get the rent supplements.

Q So, in other words, recipients can live in 236 housing without rent supplements?

A Right. I think it's a very mischievous practice.

Q Why?

A Because I think it destroys the very significance of the rent supplement program which was to provide in a single building a mixture of people at various income levels so that the rent supplement program would be for low income people and the non-supplemental apartments would be for people who earned enough with their income to pay the normal 236 rental.

Q You mentioned several times sources available to you or studies done by social workers and the like on the budgeting process. Could you give us examples of those sources?

A Certainly. For eight years, I believe I served on the Board of Directors of the United Neighborhood Houses of New York City, which is an organization of settlement houses throughout the city.

Its board of directors is composed of, on the one hand, of public directors, like myself, who had no immediate contact with settlement houses work and on the ohher hand with the health workers of each of the participating settlement houses.

I served on many committees of that board. I read much of their literature. I've studied the literature of the Community Council to which my organization belongs and I'm familiar with such things and the tenement house problems and the whole literature of it goes back to many years dealing with these questions.

Q Have you ever been trained to evaluate studies of the sort that you mentioned?

A Well, the books I might mention are all intended for consumption by the general public which I don't think is much more intelligible than I am.

Q I haven't seen any of these sources you're mentioning but do they contain raw data or interpretations by the author of the particular text?

A Well, the books contain interepretations by Roy Luback (phonetic spelling) as well as long quotations from people who have been in the field of tenements and houses and contain source material and another

book I might mention to you is "Slub Housing" by Ford, published by the Foundation, a two-volume book on New York City housing which go into all the questions of rent for a period of a rent year.

Obviously, I have to deal with such sources. I don't claim to be a researcher. I have to rely on the opinions and the research of others.

Q How do you go about measuring the accuracy of the text you rely on?

A I find an interminable consistency a very good measure.

Q That is in the book itself?

A Yes.

Q Does it make logical sense?

A I think logics is a very good test and I would say it is as good a test as the measure of what I read against my own experience.

Q Now, you mentioned that the receipt of two-party checks in your building or the obtaining of two-party checks, housing 16 individuals and 14 welfare recipients had become an extraordinary event.

Does that mean you no longer received two-party checks?

A I am quoting my managing agent. My managing agent says it's so hard today we give up. That's what he said. You can evaluate it.

Q Is your understanding of the procedure that the landlord requested two-party checks?

A My understanding being that the owner threatened eviction and at some point or other in the very painful process the caseworker or investigator would arrive on a "white horse" carrying the two-party checks.

It happened in one case that I'm familiar with, which was the third check for the specific amount but I'm not for a moment suggesting this is the typical experience with welfare people but I'm only saying in those cases, where there are delinquencies, the problem of giving a second check has become so difficult that our managing agent says to me, "It's not worth it."

Q Do you know why it's become difficult?

A No. I don't know why except I did read in the newspapers about Mayor Lindsay's bragging about the money spent on welfare going down. I am aware of the temper of the times and the feeling towards welfare and I expect it's in response to some of those public pressures.

Q In any given case of a tenant of yours who is in arrears, id you investigate the reason why you did not receive a two-party check? Did you personally investigate it?

A No.

THE COURT: Miss Balen, I think you've explored all that.

MISS BALEN: OK. I have no further questions.

THE COURT: Very well.

MR. BRODSKY: Just one, your Honor.

REDIRECT EXAMINATION BY MR. BRODSKY:

Q Mr. Starr, are you familiar with the 90% rule as applied by the Lefrak Organization?

A I'm familiar, Mr. Brodsky, but I'm incapable of handling their mathematics.

MR. BRODSKY: I have no further questions.

THE COURT: Thank you very much.

(The witness was excused)

MR. BRODSKY: I'd like to call Richard Lefrak.

RICHARD LEFRAK, after having been first duly sworn, testified as follows:

THE COURT: State your name for the record.

THE WITNESS: Richard Lefrak.

MISS BALEN: Your Honor, before this witness testified and I don't want to testify, but I must protest. We had no idea he was going to be a witness. We were not informed at any time.

MR. BRODSKY: I said Sam Lefrak would probably be a witness and he will not testify. Richard Lefrak is testifying instead. I think the testimony won't take more than five minutes. It's just a substitute because Sam Lefrak isn't here.

THE COURT: Nothing that would be surprising?

MR. BRODSKY: No.

THE COURT: Proceed.

DIRECT EXAMINATION BY MR. BRODSKY:

Q Mr. Lefrak, what was the rental standard for the Lefrak Organization before the consent degree? You're familiar with the consent degree?

A Yes.

Q What was the standard of the Lefrak Organization before the consent degree was previously executed?

A We followed the rule I think they referred to here as the 25% rule.

Q Were you or did you participate in negotiations leading up to the consent degree?

A Yes. I did.

Q Are you familiar with what we've been referring to as the so-called 90% rule?

A Yes. I did.

Q And the 90% rule started to be used by the Lefrak people when the consent degree was executed; is that correct?

A That is correct.

Q Who suggested that the rule be changed from what we've calling the 25% rule to a 90% rule?

A It was suggested by the attorneys for the Justice Department that were handling the law suit. It was felt - (interruption)

MISS BALEN: This appears to be hearsay, your Honor.

MR. BRODSKY: It's not hearsay. The point of the testimony is this, your Honor:

I want to show that changing from 25% to 90%, as we have been referring to it, simply had nothing to do at all with rates. In other

words, there's no racial intent we've been accused of having, a racial intent, and this witness is prepared to testify as to why it was done.

THE COURT: It came out in a consent decree?

MR. BRODSKY: Yes.

THE COURT: Very well.

Q Go ahead.

A At the time we were negotiating the consent degree, the attorneys for the Department of Justice wereinterested in establishing objective standards - (interruption)

MISS BALEN: Objection. Hearsay.

THE COURT: Why doesn't he just say what happened? That is as to the consent decree and why he had to have the 90% rule?

MR. BRODSKY: I think it's important to know who requested it. It wasn't something we requested. It was something the Government requested and the Government had a reason for it, nothing to do with the rates.

We've been accused of using this policy to prevent minority groups to be in our

building and I think cases do say the plaintiff must show a racial intent. We're showing the reason for that. That's the purpose of proof.

THE COURT: I think the cases depend on its effectiveness.

MR. BRODSKY: In a private case, as this is, that is not a state action, I think one of the elements of the plaintiff's cause of action is the racial intent.

THE COURT: We'll have to check into that.

MR. BRODSKY: Yes. May the witness give his testimony?

MISS BALEN: May I comment that whatever the reason the Justice Department had - (interruption)

THE COURT: ...has no bearing on this. I'm not going to consider it for that purpose at all.

MISS BALEN: Thank you.

THE WITNESS: Well, it's simply when we were establishing standards in the

consent decree that they suggested this 90% rule that's been referred to.

THE COURT: The decree?

THE WITNESS: Yes.

THE COURT: All you had to do was to say that part of the decree would require it. Is that sufficient?

MR. BRODSKY: I want to ask him one more question.

THE COURT: Very well.

Q Wasn't the purpose that the person who paid less in taxes would, in effect, be treated more liberally?

A Yes. They felt it would ameliorate the problems because there was no tax to be paid.

THE COURT: The testimony of the other witnesses here is that it was more liberal, in effect, than the 25%.

MR. BRODSKY: Yes.

THE COURT: Do you have another question?

MR. BRODSKY: No. I don't.

I don't know whether or not, technically, they are in evidence, the consent order, as Exhibit Y, and as to our motion to deny the

consent, Exhibit B for identification.

Probably, the Court could take judicial notice but I'll just offer them and have them formally in the record. I don't think there's any objection.

MISS BALEN: No.

MR. BRODSKY: "J" is here.

THE COURT: Does it have a limitation?

MR. BRODSKY: This is Exhibit K for identification, (indicating). What the consent decree said, in effect, is that after a period of two years, upon our application, if there were no objections, it would be dissolved automatically.

We applied for the dissolution of the consent degree after the two-year period, on notice, to the Government and these are in the papers I offered.

The Government made no objection so that the consent decree, after of two years, is dissolved by itself.

That's how it happened, your Honor.

THE COURT: When was it terminated about?

MR. BRODSKY: It would have been February, I believe, of 1973, I believe.

THE COURT: This year?

MR. BRODSKY: March 5th of 1973.

THE COURT: Mr. Clerk, will you mark it?

(Defendants Exhibits J and K previously marked for identification, previously described, were marked in evidence)

MR. BRODSKY: No further questions of this witness.

MISS BALEN: May I comment at this juncture that in the record of the U.S. against Life Realty case a transcript was obtained of an open hearing held December 22, 1971 in which the reason for the 90% rule was placed before Judge Weinstein, who was sitting on the case;

The second point I wish to make is that the order actually dissolving the consent order made specific reference to this case saying the order would not, in no way, interfere or have any effect on this case.

MR. BRODSKY: I didn't make that offer.

THE COURT: I understood it didn't.

CROSS-EXAMINATION BY MISS BALEN:

Q Did the Justice Department force you to take the 90% rule? Did they tell you that you had no choice?

A No. We always had the choice of litigating the case. I believe there's some free choice left in this country so I believe we had the choice of litigating.

Q So you did consider it when using the 90% rule?

A Yes.

Q And what did you decide?

A We decided it was substantially in effect as to the rule we had been applying, that it was a reasonable protection for the landlord; that it was a rule that had existed, to my knowledge, for many years and we felt it would not significantly change our policy.

Q So you did not feel the 90% rule would bring about a substantial change?

A No.

MISS BALEN: Thank you. No further questions.

MR. BRODSKY: Your Honor, in my rush to complete this, I never asked Mr. Lefrak what,

if any, his association was with the Lefrak Management Corporation. If I could just ask him so we could have it in the record?

THE WITNESS: I'm Vice President of the company. I also served in the capacity of counsel.

MR. BRODSKY: Thank you.

THE COURT: You may be excused, Mr. Lefrak.

(The witness was excused)

MISS BALEN: At the time Mr. Brodsky informed me he was going to introduce into evidence the Bureau of Labor Statistics chart, I indicated to him I would not object if I was also able to introduce, without objection, plaintiff's Exhibit 25 for identification into evidence and I'd like to introduce it.

MR. BRODSKY: No objection.

THE COURT: The clerk will mark it.

(Plaintiff's Exhibit 25 previously marked for identification, was marked in evidence).

MR. BRODSKY: I'd like to call Bernard Meyer, please.

BERNARD MEYER, after having been first duly sworn, testified as follows:

THE COURT: State your name for the record.

THE WITNESS: Bernard Meyer.

DIRECT EXAMINATION BY MR. BRODSKY:

Q Mr. Meyer, what is your occupation?

A I'm a field supervisor for Lefrak Management Company.

Q How long have you worked for them?

A Over 17 years.

Q What are your duties?

A I generally take care of the personnel, maintenance, public relations work regarding the Lefrak Management Company buildings.

Q Do you visit the buildings?

A Well, I'm out every day visiting buildings.

Q Every day?

A Yes.

Q Not all the buildings but certain ones?

A I'm not every day visiting buildings.

Q Do you also attend tenant meetings?

A Any tenant meetings or any rumblings in buildings, I make it my personal attention to go down there and find out what it's about and alleviate it.

Q How long have you been doing this?

A Since I've been with the Company.

Q In that capacity, have you become familiar, generally, with who is living in the buildings?

A Oh! Sure. By sight, I know every building, every super and I see people as I go through the buildings, (indicating).

(At this point, the witness displayed a chart)

MR. BRODSKY: If we could mark this (indicating) as the next defendants exhibit? I'm going to offer this as a map of the five boroughs of Manhattan along with pins which Mr. Meyer will testify where there is a Lefrak building.

Why don't I offer it in evidence, if I may and Mr. Meyer, he will so testify?

THE WITNESS: Yes. I made it up. It covers the portfolio that we manage.

MR. BRODSKY: I'll offer it now.

THE COURT: It's similar to Indik's?

MR. BRODSKY: No. Indik's was on welfare. This is on our own building.

THE COURT: Mark it.

(A chart was marked Defendants Exhibit Y in evidence)

Q Now, there was some talk about Lefrak City and maybe you can first tell us what Lefrak City is.

A Lefrak City Number One is just what it says. It's a city in itself with approximately four thousand to five thousand tenant apartments which would have, approximately, 20,000 people residing in them.

MR. BRODSKY: May he step down and indicate?

THE COURT: Yes.

(Whereupon, the witness left the stand and indicated on Exhibit Y)

THE WITNESS: This group of buildings right over here, it's right off the Long Island Expressway not too far from Queens Boulevard (indicating).

There are no through street. It is a city. It has stores. Everything one would possibly want. They are high rise buildings. They have doormen and guard service and a fire department at all times running around. It's a self-composed city. We do have outside police that come in occasionally or if it's a big fire, the Fire Department will come in.

Q When was it built?

A Approximately 11 years ago.

Q To your personal knowledge, have there been black residents in Lefrak City since the time it was built?

A No question. Absolutely.

Q From your personal knowledge, today and in the recent past, can you tell us what the racial composition of Lefrak City is? The best you can do. I understand we don't have actual figures.

A I would say it's close to 50%.

Q Of what?

A Blacks.

Q At the time Lefrak City was built, from your own personal observation, what was the racial complexion of the surrounding area of where Lefrak City is now?

A Predominantly white.

Q Now, what is the racial complexion of Lefrak City?

A Still predominantly white.

Q But Lefrak City is what?

A Forty-five to 50%.

Q Of what? Black and Puerto Ricans?

A Black and Puerto Ricans.

Q If you would and maybe we can do it a little easier this way: Why don't you step up here and go through the clusters of buildings and, if you would, tell the Court, from your own personal knowledge, from visiting the buildings, from meeting with tenants and tenant committees, what you observed to be the racial complexion of the buildings? If you would just do it that way.

A Lefrak - surrounding Lefrak buildings, we have buildings in the Forest Hills area, which is a large group of approximately seven buildings.

There are blacks in the buildings but it's predominantly white.

Q What is this surrounding neighborhood, if you would do that each time? (Indicating)

A The surrounding neighborhood is all white. I mean, unless I specify, it will be an all white neighborhood.

Q Go ahead.

A You run into the Flushing Avenue area, which, incidentally, is located in a beautiful park and garden, when we opened the building I'd say eight or

nine years ago. It was predominantly white. The surrounding area is predominantly white. Today, I'd say approximately it's 25% to 35% blacks in that particular area.

When you go into Elmhurst, you have a number of buildings, predominantly white areas, and a small percentage of blacks.

Q When you say "blacks," are you talking about blacks and Puerto Ricans?

A I mean both.

Q If you can show that?

A When you go into the Astoria area, which is a predominantly white area, the same thing prevails and when we go down into the Sunnyside area, the same conditions prevail there.

This would, generally, more or less, cover this area. From there, I could take you into Rockaway.

Q That Rockaway, Brooklyn?

A It's on this map here (indicating). This is predominantly a white area. Over the years, it has become integrated, not a great percentage, but a percentage of blacks residing in the buildings.

Q From there, we go into the Brooklyn area, into Sheepshead Bay?

A Yes. We have a number of houses that face on the water. It's predominantly a white neighborhood and you have a small percentage of blacks and Puerto Ricans.

Q In the Lefrak buildings?

A I'm talking only about Lefrak buildings.

Q Go ahead.

A When you go into the Coney Island Avenue area, there are a large group of five or six buildings within a seven block area. Here, again, we have a predominantly white neighborhood but a certain amount of blacks and Puerto Ricans are involved.

When we go back into Nostrand Avenue, the same conditions prevail there. It's a white neighborhood with blacks and Puerto Ricans.

From there, we go into the East New York section. The East New York Section opened up, I'd say about eight or 10 years ago. It was predominantly a white neighborhood over the years. The neighborhood is still white but the houses have turned forty percent or better to black and Puerto Ricans.

We also have a Staten Island complex of garden units. There are no blacks there. I have never

seen any blacks in our development.

Q What about the surrounding areas?

A The surrounding area is mainly white. We have a house on 92nd, 95th - beg your pardon - Columbus Avenue - it's a mixed neighborhood and we have mixed clientele in the houses, blacks and Puerto Ricans and whites and that, more or less, covers our portfolio.

MR. BRODSKY: OK. I have no further questions.

THE COURT: Any further questions?

MISS BALEN: No.

THE COURT: We will recess to tomorrow morning at 9:30 a.m.

(Whereupon, the trial was adjourned at 5:25 p.m. to be continued on December 6, 1973 at 9:30 a.m.)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

DOROTHY BOYD, individually, and on behalf of all others similarly situated :

Plaintiff :

INEZ STONEY : Index No.

Intervenor-Plaintiff : 71-C-1433

-against- :

THE LEFRAK ORGANIZATION and LIFE REALTY, INC. :

Defendants :

----------x

225 Cadman Plaza East
Brooklyn, New York
December 6, 1973

The trial was continued on December 6, 1973 from December 5, 1973 at the United States District Court for the Eastern District of New York, beginning at 9:30 a.m.

Before: HONORABLE TOM CLARK
United States District Judge

JOSEPH L. BENEDETTO
Acting as Official Court Reporter

Appearances:

WILLIAM L. REESE, JR., Chief Counsel
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By: RUTH BALEN, Esq.
M. VICTOR GEMINIANI, Esq.
Of Counsel

MESSRS. GOLDSTEIN, SHAMES & HYDE
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Attorneys for Defendants
By: EDWARD BRODSKY, Esq.
EDWIN L. SCHWARTZ, Esq.
Of Counsel

MR. BRODSKY: Although I had concluded yesterday, I think Mr. Meyer neglected to tell you about the buildings in the Bronx and if he could just include that, it would just take a minute.

THE COURT: All right.

BERNARD MEYER, having been previously duly sworn, testified further as follows:

DIRECT EXAMINATION BY MR. BRODSKY:

Q Tell us about them.

A We have a group of buildings up on Bruckner Boulevard, which is in a mixed area. We have mixed clientele.

We also have some property up in Hempstead, which is a predominantly white area, where we have, I

would say, we have a good mixture of blacks and Puerto Ricans as well.

There's another group - it would be in Mt. Vernon but I couldn't possibly get it on the map (indicating) and it would be in a predominantly white, mixed area, black and Puerto Ricans.

MR. BRODSKY: Thank you.

CROSS-EXAMINATION BY MISS BALEN:

Q Yesterday, Mr. Meyer, you testified concerning your belief of the racial and ethnic compositions of Lefrak City.

Are there any records in your office concerning that racial and ethnic composition?

A No, ma'am, not to my knowledge.

Q Do you know what the racial and ethnic composition of Lefrak Village was in 1967?

A I don't know the exact amount. I know it was much less. Over the years, it progressed where they got more and more. I don't know the exact amount.

Q How many apartments did you say Lefrak Village has?

A I believe 4600.

Q And how many of those are occupied by blacks and Puerto Ricans?

A I don't know the figures. I'm sorry.

Q How many of the tenants have you met so you know them on sight as tenants?

A Well, I have attended tenant meetings.

Q In numbers, Mr. Meyer?

A Beg your pardon?

Q In numbers, how many tenants have you met?

A I would say I met hundreds of them.

Q Out of 4600, how many of the hundreds are black and Puerto Rican?

A I would say, approximately 35%, 45%. It's hard to determine, really.

Q Do you know whether that group you met is representative of the racial and ethnic background of the tenants you have not met?

A Would you repeat that? I'm sorry.

Q Do you know whether the group of tenants that you have met possesses the same racial and ethnic characteristics of the hundreds and hundreds of tenants you have not met?

A I will tell you why I say yes and the reason is yes, when I met them I met them when they

represented various buildings so I would assume they are. The rest are about equal.

Q Well, were they there because of their race?

A No, ma'am, no.

Q When you gauged the racial and ethnic composition, did you do it by walking through buildings and the grounds of surrounding buildings?

Do you count every black person you see as a tenant?

A No. Idid not.

Q How do you know which are tenants and which are not?

A Beg your pardon.

Q How do you know those you saw walking through the buildings on the grounds, are tenants and which are not?

A In Lefrak City, it's a confined area and there are not many people who are there who don't belong there.

Q But to be there you don't have to be a tenant, do you?

A No. There's a way in, I'm sure.

Q And what you stated was the racial and ethnic compositions of your buildings is all over the city? Were you not drawing that conclusion from the same sort of information of walking through the buildings, meeting the tenants?

A That's the only way I can tell or by meeting tenant groups.

Q Then you mentioned the building on 92nd Street in Manhattan yesterday. Isn't that a Mitchell-Lama project?

A That's right.

Q Isn't it located in an urban renewal area?

A It is.

Q Are applications in that apartment treated differently from your other buildings that are not Mitchell-Lama buildings?

A It has nothing to do with it. I have no idea. I only look at the maintenance of the buildings.

Q Now, are the buildings in Hempstead and Mt. Vernon also Mitchell-Lama urban renewal ar apartments?

A They can be. I'm not concerned with that part at all.

Q You mean you don't have anything to do with the renting of these buildings?

A No, ma'am.

Q Do you know how many blacks and Puerto Ricans lived in the building at 2815 Coyle Street in Brooklyn, in 1969?

A How many?

Q How many?

A I have no idea how many.

Q Can you give us the same kind of estimate you've given for the rest of your buildings as of today?

A Well, I have seen black people. I have seen Puerto Ricans and I have seen whites. It's a common thing to see in our buildings. I couldn't say how many. There weren't a great amount.

Q In '69, in Coyle Street?

A To the best of my recollection, for the longest time.

Q There were not any?

A There were. I've seen them. I don't know how many of them. I've seen them in the building.

Q What area is that located in?

A Beg your pardon?

Q What area is that building located in?

A Sheepshead Bay.

Q Do you know what the racial and ethnic composition of that building was in '69?

A In '69, it was predominantly white.

Q Do you know how many blacks and Puerto Ricans lived in the building at 232 Shore Parkway, Brooklyn, in '69?

A I don't know.

Q What area is that located in?

A That would be considered in the Sheepshead Bay area.

Q Do you know how many blacks and Puerto Ricans lived in the building at 425 East 96th Street in 1969?

A I don't know the exact amount. All I know is what I see.

Q What did you see there?

A In 1969?

Q Yes.

A I saw blacks and Puerto Ricans in the building, no great amount, but I saw them in there.

Q What area is that located in?

A That would be East New York.

Q Do you know what the racial and ethnic composition of that area was in 1969?

A In 1969, I believe it was predominantly white.

Q Do you know how many blacks and Puerto Ricans lived in the building at 444 Borough Parkway in 1969?

A Again, I don't know but there were blacks and Puerto Ricans.

Q What area is that located in?

A That's East New York.

Q Do you know what I refer to when I say the East Flatbush Section?

A No.

MISS BALEN: No further questions.

REDIRECT EXAMINATION BY MR. BRODSKY:

Q Is it true, Mr. Meyer, from 1969 to '73, generally speaking, in the areas where the Lefrak buildings are located that more and more blacks have been moving into the buildings rather tha.. whites by percentages?

A I would say over the years, from '69 up, there has been. I noticed an increase.

MR. BRODSKY: OK. No further questions.

THE COURT: Very well. Any questions, Miss Balen?

MISS BALEN: No.

THE COURT: You may step aside.

(The witness was excused)

MR. BRODSKY: I'd like to call Mr. Cuccia, your Honor.

ANTHONY CUCCIA, after having been first duly sworn, testified as follows:

THE COURT: Give your name for the record.

THE WITNESS: Anthony Cuccia.

DIRECT EXAMINATION BY MR. BRODSKY:

Q Mr. Cuccia, what is your occupation?

A Real estate salesman.

Q For?

A Life Realty, Inc.

Q How long have you been so employed?

A Approximately 15 years for them.

Q I'm sorry?

A Approximately 15 years.

Q What have your duties been and what are they as a real estate salesman for Life Realty, Inc.?

A To assist various people who come into the office, helping them to get located in different apart-

ments in the Lefrak buildings.

Q Now, can you tell me, in a typical case, what the procedure is when a person comes in looking for an apartment? Take me through the procedures.

A A tenant comes in seeking an apartment, where we generally try to assist him in finding a location where he desires to live in.

If he doesn't know of a particular location, then we try to suggest a location. The prospective tenant, selecting a particular building - we will then write on my business card, which would give them the location, the rent and they would then go to the particular building to see if they like the apartment in the building.

If they so desired it, then they would return to the office and, if not directly to me, maybe to my associate, Mrs. Gelman or whoever was in the office taking applications at the time.

The procedure is then taking an application from the applicant and after taking the application, providing they have met the landlord's financial requirements, we will then take a $25. deposit and this will secure the apartment for that day.

Q And what is then done with the application?

A The application I leave to Mrs. Gelman who is my superior, who then, in turn, takes it to the credit agency of the Lefrak Organization for processing.

Q Now, you, yourself, don't make any decisions as to whether or not a person should get an apartment in any Lefrak building, do you?

A No, except for the fact if a tenant does not meet the financial requirements of the landlord, I simply tell them he does not qualify and I would not be able to rent them an apartment under those circumstances.

Q Could you tell us if that is a strict standard? I mean, if a person is a little below, for example?

Will you tell him that when you take his application or how do you do that?

A Not necessarily. If a tenant comes in and, well, if he has a good position and a good background and he's shy a few dollars, of course, I would submit the application to the landlord for his acceptance, of course.

Q Have you ever treated blacks and whites any differently?

A No. Never.

Q In your experience over the 15-year period, has the Lefrak Organization always rented to blacks and whites?

A To the best of my knowledge, yes.

Q Have you ever treated welfare recipients differently than others?

A No.

MR. BRODSKY: Your Honor, there is one thing I think we can clear up in the record by agreement. This is in connection with the introduction of my next exhibit.

When Mrs. Stoney testified, she testified that it was sometime in 1971, according to my recollection, that she went to Life Realty for an apartment.

Her testimony is inconsistent with an affidavit that Mrs. Stoney submitted and I'll tell you why this is material in a minute.

MISS BALEN: Your Honor?

MR. BRODSKY: If I can finish.

MISS BALEN: We'd love to stipulate.

MR. BRODSKY: So we know what we're stipulating and why, if I can just finish?

MISS BALEN: Go ahead.

MR. BRODSKY: Mrs. Stoney said she came in, in 1971. Her affidavit said she came in, in the week of March 13, 1972 and we can just have a stipulation that, that indeed, is what she said in her affidavit.

It's going to become material in a minute. Is that stipulated?

MISS BALEN: We are more than willing to have the record cleared. It was in 1972.

MR. BRODSKY: What her affidavit says is that she was advised of the apartment on March 13, 1972 and she actually went to the apartment to the Life Realty on March 25, 1972 and she went back on March 29, 1972 and, as she put it, she was told the apartment had been rented on March 28, 1972.

Now, the significance of it, I take it, will become apparent in a moment, your Honor.

Q Now, Mr. Cuccia, did you take an application for an apartment on March 27, 1972?

A Yes. I did.

Q And am I showing you now the application along with the credit report that came back with the application?

A Exactly.

Q Along with the Government Daily Log on which the name of that applicant is on?

A Yes.

MR. BRODSKY: I offer it in evidence.

THE COURT: Any objection?

MISS BALEN: No.

(Defendants Exhibit V previously marked for identification was marked in evidence, being the application and paper previously described)

Q Now, you recall, Mr. Cuccia, that a man named David McCullen (phonetic spelling) came to rent an apartment?

A Yes.

Q And that you took his application?

A Yes.

Q What apartment was that for?

A 4-T, West Point.

Q I don't know if you noticed but that's the same apartment, is it not, that Mrs. Stoney looked at?

A I believe this is the apartment that's in question, yes.

Q So that, as of March 27, 1972, you had taken a deposit with respect to that apartment?

A Yes. I did.

Q What is the procedure that you used after you take deposits on an apartment? Would you show that apartment while the application is being processed?

A No. Once they apply for an apartment there's a reasonable chance that they would be accepted by the landlord. Well, there's no point in showing it again until we know if it's been accepted or not.

In the event it's been rejected for any reason, then we then proceed to show it again.

Q Let's take a case where somebody else has looked at the apartment, the application has been taken and the first person now comes back and says, "I'm still interested in that apartment". What would that person do while the application is being processed?

A I'm sorry.

Q One person comes in and the apartment is vacant and you show it. The next day or so you take a deposit on the apartment -

A Right.

Q The day after that the first person comes back and while you have the deposit and says, "Well, I'm now interested in the apartment". Do you understand?

A We have a policy in our office to avoid arguments or anything that people might think we might be doing so we have a first come first served basis.

Whoever comes in and says, "I want the apartment," we take their application and deposit and so we will with everyone because sometimes we might be sending three or four people over to the same apartment and we never know who is going to come back and say, "I want the apartment" and we're there to rent.

We don't want to lose a rental and we will then take the first applicant who so desires and says, "I want that apartment and we will take their deposit and once that's done we take that apartment away from the rental list.

Q You take it away from the credit check?

A Yes. Of course.

Q And the same apartment might come to the market if the credit check is disapproved?

A Yes. For various reasons, might reappear for a rental and a tenant might decide, "I changed my mind" or the landlord might say, "Not acceptable" so, therefore, we have various reasons why an apartment might reappear for a re-rental.

Q With that particular apartment, what actually happened? Can you tell from the credit report? Can you tell from anything on there?

A This particular applicant was rejected for insufficient income. According to the credit report, they had been applying for an apartment of $295. and they reported income, he was working as a mechanic, at this particular gas station and taking home $120. and his wife had been taking home about $85. as a domestic and other income he had he claimed in that he had a government disability of $150. which came to $355. but according to the credit report that we got back, it so stated that the applicant's basis of $150. weekly is correct but the owner of the station says that the tenant is spotty - in other words, he came to work sometimes and sometimes he didn't and that the actual earnings

are a good deal less so, therefore, this was a perfect rejection by the landlord as his financial requirements were not adequate.

Q Now, you said before that when welfare recipients have come in over the years you treat them the same as anybody else; is that correct?

A That's correct.

Q And you try to learn from them how much money they get from whatever source; is that correct?

A Correct.

Q And when you add up the amounts they got and that's insufficient, you ask them whether or not they can get a guarantor; is that correct?

A Well, once they acknowledge the fact they are on welfare, then I hand them a circular such as this, your Honor, (indicating).

MR. [redacted]: That's Exhibit 9 in evidence.

THE WITNESS: Which simply indicates to the prospective applicant that since his net weekly income is not equal to 90% of the monthly rental, then he has a choice of either getting, for the landlord, a private guarantor or he can go and see if he can get the lease guaranteed by a government agency

of some sort to guarantee the lease. Then, they leave. If they come back with a guarantor or if they prove that their income meets the landlord's financial requirement, we accept them.

Q And you have accepted welfare tenants over the years, have you not?

A We have.

Q Look at Exhibit U in evidence.

A Yes. This is a sign that we have hanging on the bulletin board and you can't miss it because the bulletin board, as you enter the door, is on the right hand side and it's not obscured by anything. That, you can't say you can't see it because it's hanging near some other circular.

Q The "Notice to Welfare Recipients"?

A Right and it's visible to all people who walk into that office, at all times.

Q And it has always been there?

A It's always been there. You can see the discoloration of the sign. It's nothing new.

Q This is the actual sign? (Indicating)

A Yes. We've actually taken it off. At this time, there's no sign there because we brought it here.

Q Mr. Cuccia, do you specifically remember Mrs. Dorothy Boyd?

A No. I don't.

Q Just by frame of reference, Mrs. Boyd has testified she had a conversation with you and you sent her out to a particular apartment and when she called back to tell you that she wanted to rent the apartment, you asked her to come in with her husband's Social Security card.

Take that as a frame of reference. OK? Now, Mr. Cuccia, did you have such a conversation with anyone?

A No.

Q Now, how can you tell that? You talk to a lot of people all the time. How can you tell that?

A Well, when they call up for an appointment, we have ads running in the paper and they say, "Do you have such an apartment?" and I say, "Yes, we do."

I tell them, "Well, please come into the office and we'll be able to help you find this particular apartment. We may have some others."

Q Do you ever ask anybody to come in with their husband's Social Security card?

A No. Not at any time.

Q Would you, after a person has seen an apartment and calls and says they want to rent it, take any financial information on the telephone?

A No. In the case of a single person sometimes I would be inclined to ask the single person. If, for example, a single person says to me, "The apartment is for one person and I want a three-room apartment," it's perfectly OK with me.

I'll rent it for three or four as long as the financial requirements meet with the landlord's approval and I would say, "Can you tell me what you weekly take-home pay is?" Since there's a financial requirement, there's no sense in their running down here if I can't help them.

I would say, "It's only if you care to because I don't like to ask these questions over the phone. They are personal" so I say, "If you care to, you can do so."

So, if a man doesn't want to tell me and wants to run down, OK. Then, in that case, if a single person is making $110. a week and he wants to pay for a $190. apartment, I say, "Gee! Fellow! There's no

sense." And "If you want to come down, you're welcome to come down but I don't have anything in that category" and that's the only time I would do it.

MR. BRODSKY: No further questions of this witness, your Honor.

CROSS-EXAMINATION BY MISS BALEN:

Q Mr. Cuccia, if a public assistance recipient comes into your office interested in renting an apartment and/or either renting an apartment or simply inquiring about an apartment and tells you that he or she is on public assistance, do you inform them they cannot qualify by the 90% rule?

A I simply ask them first what does Welfare allow them and then take it from there and taking the figures, knowing that the figures they had given me are under the financial requirement, I simply hand them that circular to inform them what can be done to secure the apartment.

Q So you don't take an application from a public assistance recipient?

A Not at that point, no.

Q Now, on completion of the form - you're familiar with it, are you not?

A Yes.

Q How is that form filled out? Do you do it or does the applicant do it?

A No. We do it.

Q Would you describe to me the process, the procedure you follow in filling out that application?

A Well, you have your heading which has the building and the date of occupancy and then the amount of security and the lease.

Q Why don't you look at the application and then you can show us?

A OK.

Q These are Defendants Exhibits M and N (indicating). You can use either one.

A It doesn't make any difference. May I proceed?

Q Yes. Please do.

A All right. You have your heading and description of the building, the address, the apartment, the amount of rooms, the rentals, the occupancy date, the terms of the lease and the amount of security involved.

Of course, the date the application is taken is there, name of applicant - (interruption)

Q How are you obtaining this information?

A By, first of all, they will tell us the building that they want and we do know what the rent is and we know the security and the next question is to ask them their name and, of course, in taking the application, if we have a husband and wife on an application, the name of the applicant, the husband's first name. If it's not, then it's whoever is applying.

Q Let's skip down now.

A OK. I just want to get that clear.

Q Now, we come to income or resources.

A All right. Fine. We ask them what your weekly gross income is and the amount of expenses that they claim and what do they take home after all deductions and, of course, we go on to ask them, "Is your wife employed?" and so forth, "How about other income? Would you please tell us what other income you might have so that we might put it on the application?"

Once we see that it meets the financial requirements of the landlord, we go no further.

Q All right. You can stop there. Suppose at the point where you asked, "What is your income" the individual says, "I'm a recipient of public assist-

ance" what do you put on the application?

A I simply put down "welfare" or "Social Service."

Q You don't put the amount?

A Sometimes I did and sometimes I didn't because I already figured it on the side. If they told me they were welfare recipients, they would tell me what they got and I could figure it out on the side.

Q But you wouldn't put it on the application that you had sent to the credit department?

A No.

Q Now, when you came to "other income" - let's take an ordinary applicant, a non-public assistance recipient - suppose they said to you and I suppose people say to you frequently, "What do you mean by 'other income'?"

A Not really.

Q What do you understand it means?

A Whenever the question is raised, such as bank account, stocks, bonds, what have you, to let me know whatever income there might be in the family so I might put it down.

Q And the ordinary applicant understands and normally gives it to you?

A Normally gives it to us.

Q And when you come to a public assistance recipient and ask what other income do you have, do they understand what you mean?

A Most of them do. Whatever they tell us I put down on the application.

Q What did they tell you?

A We figure out whatever the rent is, whatever they tell us they are allowed for the rent plus whatever allowances they are given and we put it down.

Q This is in "other income"?

A Well, the rent then, actually, the rent and the amount of moneys that are given, I would actually list it as income, rent and whatever allowances they got.

Q The main source of income?

A Yes.

Q You put down food stamps, Mr. Cuccia?

A If they tell me, I put it down.

Q How many tell you to put it down?

A To be truthful, not many mention it at all.

Q How much money do you allow for food stamps?

A I really don't know the amount.

Q You don't know what they are worth?

A No. I don't.

Q Do you put down free medical benefits?

A If they tell me, I put it down.

Q How much do you put down for them?

A I put down, if I wanted to put it down, I put down medical but let it up to the credit agency. I really don't know what allowances they have. I'm not aware of it.

Q I show you Plaintiff's Exhibit 24-A and I ask you if that is your signature on the bottom (indicating).

A It is.

Q Could you tell me what it is?

A This is an application made by Shirley Lee for an apartment in the Dakota.

Q When you come down to the part of the application where income is to be entered, what have you entered there?

A Nothing. I just put down Social Services as I indicated before. I don't always do.

Q No amount?

A No.

Q When it came to "other income," did you put down food stamps?

A No. I didn't. I wasn't told this. I don't believe I was.

Q I show you Defendants Exhibit T marked for identification and ask you if you've ever seen it. (Indicating)

A Yes. It was called to my attention by Mrs. Gelman because I had taken the application.

Q In particular - well, first of all, will you tell us what it is, in general terms?

A It's a typical credit report done by our credit agency.

Q The credit agency you usually used?

A The Gordon Reporting Agency.

Q And on occasion, you do see these credit reports when they are returned to you?

A Yes. In this particular instance?

Q Please! You normally see the credit report?

A Let me finish, please. I said in this particular instance, we're talking about this particular applicant, in this particular case, it was called to my attention by Mrs. Gelman.

She said she happened to see, you know, that application "that you took" and she said the whole thing was fraud.

Q She didn't mean Shirley Lee was a fraud?

A No, no.

Q Will you look at the top part, the first bit of information entered by the credit agency concerning Mrs. Lee's income?

A Right.

Q Could you read it to us? It's just one or two sentences.

A Well, the first word is "recipient of benefits from New York City, Department of Social Services, amount not learned, no further sources of income were developed."

As to record of information there was no record.

Q Is that, to your knowledge, the credit report on Shirley Lee?

A Yes. That is the credit report that would be for Shirley Lee but as - (interruption)

Q As the result of that credit report, was her application denied?

A Yes. It was.

Q Now, you've referred to Mr. McCullen's application (phonetic spelling), which is Defendants Exhibit F, which I show you (indicating) - I'm sorry - It's V.

Does that application show the apartment is actually rented?

A It shows it's rented and rejected.

Q Pardon?

A It shows, in other words, David McCullen had made applicatbon, they are entering it on the log to show his application had been rejected and the reason for it.

Q His application was taken when?

A On March 27th.

Q Now, on March 27th, the apartment had not been rented yet; is that true?

A The apartment was rented on March 27th.

Q To whom?

A To David McCullen.

Q Was he not rejected?

A Not on March 27th.

Q So, on March 27th, he had neither been accepted or rejected?

A That's correct - excuse me - the applicant had applied for the apartment and if you recall I had said once we take an application that looks like it might meet the landlord's requirements, we don't show it again.

Q Are you aware that a public assistance recipient by the name of Inez Stoney attempted to apply for that apartment on March 27th or March 26th?

A I don't recall.

Q If you had taken her application, she would have been ahead of Mr. McCullen, wouldn't she?

A Anyone who gives us a deposit, that we accept a deposit from, I should say.

Q Accept a deposit?

A Anyone we accept a deposit from.

Q And you only accept a deposit after eligibility is determined?

A Yes.

Q As to Mr. McCullen, you were relating some facts concerning his financial statement. Just briefly, without going into it too much, what was the effect of your knowledge? That he did not work all the time or did not come to work all the time, on his evaluation?

A If a man states he's making $150. a week and his employer says, "Well, I guess, if he works a full week," and I'm just assuming, if he's talking to the credit man, which I didknow this, of what went on, I assume he'd say, "Well, if he came to work every day of the week, he probably would make $150. In other words, sometimes he comes in and sometimes he doesn't" so his income would be considerably less than the amount that he declared and how else can you take it for a man like this who is not consistent in his employment and income.

Q Was the notice to the welfare recipient posted in July, 1971? I'm referring to Plaintiff's Exhibit 9. Was that notice posted in July, 1971?

A I really don't remember the exact date. However, from the day it was sent to our office from Mr. Jerry Richter's department, it has been in that office ever since it was sent there.

The exact date, I really could not tell you exactly.

Q Isn't it true that notice did not exist until December of 1971?

A I do not recall.

Q How many welfare recipients have you rented to in Brooklyn in the last two years?

A I have no way of keeping any kind of a record.

Q So, when you say you always rent to welfare recipients, you really don't know how many?

A No.

Q Or for how long?

A No.

Q Now, we have an application process that I want you to think about. The individual comes to your office, chooses an apartment to inspect, inspects the apartment and then telephones you that, to tell you that he wishes to rent the apartment. All right. That's the situation.

Now, after an individual inspects an apartment, do you normally require them to return to the office?

A That's correct.

Q For what purpose do you normally require them to return to the office?

A To fill out an application and to leave a deposit.

Q On all the applications, don't you normally request employment information?

A On the application?

Q Yes.

A Of course.

Q Now, if someone indicated that he wished to come in to make an application, mightn't you remind him to come prepare to give you all the employment information you asked?

A If it was a woman, I might tell her to make sure she knew where her husband would be and his income; yes; that I would do.

Q Now, Mr. Cuccia, when you say that you treat everyone alike, black and white, do you know that anyone who cannot meet the 90% rule, whether he's black or white, he is rejected?

A You better believe it. We do it to everyone, black and white alike.

Q And you indicated that you provide some assistance to individuals seeking apartments who do not know which area they wish to rent in. What sort of assistance do you give them?

A Well, if they don't come prepared as to the area they want to live in, then we make suggestions

for different areas and tell them it's available here and there. Most times, these people know what they want and coming in they tell us they want to live in East Flatbush or Sheepshead Bay.

They know because they have friends and relatives who live in those areas and they prefer to live in the same vicinity.

Q Of these who do not know which areas they want to live in, do they include blacks and whites?

A Sorry?

Q Of those who do not know which area they want an apartment in, are they both black and white?

A Yes.

Q Now, if a white tenant or an applicant came into your office, not knowing which area they wished to rent in, what areas would you suggest?

A Whatever I have available for the day. I go through the list and say, "These are the areas I have available. Where do you wish to live?" And th n tell them "this area is close to this street" and try to help them that way and sometimes they still don't know the area at all.

I say, "Gentlemen, it would be better

if you had a map and I'd be glad to show it to you." Sometimes, we don't have a map. If they have a map, we can point out different areas on the map.

Q Suppose that you had vacancies in the West Point, Purdue, Annapolis and the Atlantis. Which would you suggest to a black applicant?

A All.

Q On September 21, 1968, do you remember having told Linda Parker, a black woman that there were no vacancies in any of your apartments except in East Flatbush where there was a vacancy at 2425 Nostrand Avenue?

A I don't recall.

Q In April of '70, do you recall having any contacts with a Denise Moore (phonetic spelling), a black woman?

A No. I do not recall.

Q Do you remember any incident in late 1970 or early May, 1970 invelving apartment 42 440 East 49th Street?

A No. I don't recall.

MISS BALEN: No further questions.

THE COURT: Very well.

Mr. Brodsky?

REDIRECT EXAMINATION BY MR. BRODSKY:

Q Miss Balen had asked you some questions about credit reports that came back for Dorset (phonetic spelling).

THE COURT: What number is that?

MR. BRODSKY: "T" for identification.

Q Is this the credit report I'm showing you now? (Indicating)

A Yes. It is.

MR. BRODSKY: I offer it in evidence.

THE COURT: Any objection?

MISS BALEN: No.

THE COURT: Admit it.

(Defendants Exhibit T, a credit report, previously marked for identification, was marked in evidence)

MR. BRODSKY: Your Honor, I may and it will just take a second, if I may read from the credit report on Shirley Lee?

You may remember, your Honor, that Shirley Lee testified that she came in with a guarantor, Ernest Dorset, and the guarantor's application is marked as Exhibit B in evidence and that

Mr. Dorset had made certain statements about his background, about where he worked and about his income and Exhibit T now in evidence is the credit report on Shirley Lee, which also reports on her respective guarantor and I would like, if I may, to read a portion about Ernest Dorset now in evidence.

THE COURT: Go ahead.

MR. BRODSKY: "The said guarantor, Ernest Dorset"-and it shows an address, 2418 Elm Road, Westchester, New York.

We have not been able to locate any address either corresponding or close to this. There were two telephone numbers, which are listed and for business and a check of Westchester exchanges shows no such exchanges

Applicant shows a William and William, a law firm 162 116th Street, Westchester, New York. There is no law firm by that name in Westchester County nor any address corresponding to that address.

The number FY 1-9766 is listed for Marion Cleaners (phonetic spelling), 620 Wilson Avenue,

Brooklyn.

The number 443-7885 is listed for Peter Smith, 620 Wilson Avenue, Brooklyn; The number 756-7922 is listed for Joseph Robson (phonetic spellings), Empire Boulevard, Brooklyn.

The applicant claims a Police Department Retirement Pension of $16,000. showing a number 4251-D. We have checked with those joining the force before 1941 and after 1941. Neither has a record of one Ernest Dorset nor does this number correspond with any information shown.

The checking account, as shown with the Westchester Association, First Avenue, Westchester, as to that there is no town location nor any listing for a bank by this name in that area.

Q Mr. Cuccia, have you ever told anyone that Lefrak does not accept welfare recipients in its buildings?

A Never.

Q Mr. Cuccia, when people who are not on welfare come in and you are taking their credit infor-

mation, do you take from them that information if it's not volunteered such as information as to whether or not their employer pays for their Blue Cross or Blue Shield benefits?

A If they tell me, I put it down.

Q What did you put down?

A I put down Blue Cross allowance.

Q How often does it happen?

A I can't remember.

Q Do you remember it ever happining?

A To the best of my knowledge, I don't recall - maybe it happened once. I don't recall.

Q And if an employer is paying, for example, for life insurance benefits or health insurance benefits or, for example, if a union is paying those kind of benefits for a particular working person, do you take that information as part of the credit information?

A Whatever they tell me, I put down on the application.

Q I understand but has anybody ever told you? Have you put it down?

A As I said, that type of information they never tell you, what benefits are given by the particular employer.

Q What about pension plan benefits, for example? Is that ever told to you?

A No.

Q In other words, if we can put it in a larger category, I may call it "fringe benefits." Those things are told to you and you don't ordinarily ask about and they don't ordinarily appear on the application?

A Right.

Q As a matter of fact, as you sit here now, can you ever remember that type of information being told you and being put down on a credit application?

A No. The majority of our applications don't and I've never seen it; they've never told us.

MR. BRODSKY: I have no further questions.

MISS BALEN: I have no further questions, your Honor.

THE COURT: You may be excused.

(The witness was excused)

MR. BRODSKY: I'd like to call Mrs. Gelman, your Honor.

REBA GELMAN, after having been first duly sworn, testified as follows:

THE COURT: Give your name for the record.

THE WITNESS: Reba Gelman.

DIRECT EXAMINATION BY MR. BRODSKY:

Q Mrs. Gelman, what is your occupation?

A I'm a New York State Licensed Real Estate Broker.

Q For what organization?

A I work for the Life Realty Corporation.

Q How long have you been working for them?

A Twenty-three years, all told; 18 years in this very office.

Q Now, you've been sitting here while Mr. Cuccia testified. I'm not going to go over the same testimony with you. I'm going to ask you specific questions, all right?

Your job is similar to that of Mr. Cuccia, as you heard him testify; is that correct?

A With the one exception, I held the office.

Q You held the office?

A Yes.

Q Mrs. Gelman, do you recall, specifically, a woman named Dorothy Boyd coming in and wanting to rent an apartment sometime in 1971?

A Yes. I do.

Q Now, you see a lot of people in the course of a week, a month or a year. How do you specifically remember Mrs. Boyd?

A Well, we did see a great many people and we treat people, each person that comes in, as a prospective customer. However, Mrs. Boyd came in more than once and she kind of had given me a rough time.

Q Can you remember what Mrs. Boyd told you, particularly, about how many children she had, what kind of an apartment she wanted and what you told her?

A Yes. Mrs. Boyd came to our office and I greeted her with "Good morning, Good day," whatever it was, "May I help you, ma'am?"

"Yes," she needs an apartment; she knows exactly what she wants; she has friends in Clarkson Street, 1035 Clarkson, Brooklyn; she has seen Apartment 4-C and this is what she wants.

"Fine."

The lady sat down. I started to speak with her. "How many in the family?"

"I have five children and myself."

"That would be over occupancy."

Q Is that what you told her?

A Immediately, a 2-bedroom apartment that's for more than four people. "Perhaps I can get you a 3-bedroom apartment."

This is the apartment she wants, 4-C and nothing else and she walked out, kind of in a huff. A day or two later, she came back. I had some people at the desk. They were talking. She walked in.

I said, "Won't you please be seated?"

She wouldn't be seated and rushed right over and said, "I now have only four children. I want that apartment."

"Mrs. Boyd, will you wait?"

"No. I have waited. I'm going to explain I have four children. I want that apartment and this is what I want" and she ran out, still over occupancy.

Q Did you tell her she was still over?

A In front of all those people who were sitting there, "Five people are still over occupancy."

Q Do you also remember Mrs. or Miss Inez Stoney?

A Actually, I remember her also because it was also a certain tenant I did see.

Q How did you happen to remember Mrs. Stoney?

A She spoiled my 50th wedding anniversary.

Q She happened to come in on the very day of your 50th wedding anniversary?

A It was the day before or the day after.

Q What happened with Miss Inez Stoney?

A She made the day complete with us because she wanted a certain apartment. I asked her to get a guarantor.

Q Why did you ask her to get a guarantor?

A Because her own income was not sufficient for the apartment.

Q And she determined that through a conversation with her?

A Yes. I think Mr. Cuccia took the application. I looked it through and I suggested a guarantor.

Q Did she also tell her she was a welfare recipient?

A It makes no difference. We look at dollars and cents.

Q Do you remember Mrs. Stoney coming back with a guarantor?

A Mrs. Stoney, I believe, yes, did come back

with a guarantor.

Q Or did she tell you she would get a guarantor?

A No. She filled out the application. I brought it to the credit department. It came back this man was only earning a gross of $200. a week. Therefore, his net wasn't even enough to pay the necessary expenses.

Q You mean his net, as a guarantor, wouldn't have been enough for him?

A No. His net, as a guarantor, should have been $300. or better. The apartment is $295.

Q And there was a rejection on that ground, to your knowledge?

A Yes.

Q And is this Exhibit U in evidence, is this the sign there?

A Yes. That's a very prominent sign on my bulletin board.

Q It's always been there?

A Yes.

Q Mrs. Gelman, did you ever get any instructions from the Lefrak Organization to treat blacks or whites differently?

A No.

Q Or Puerto Ricans?

A People are people.

Q Have you ever, whether you had instructions or not, treated blacks or Puerto Ricans differently than other people?

A No. Never.

Q Have you ever treated welfare recipients different than other people?

A No.

Q Have you ever had instructions from the Lefrak Organization to treat them differently, welfare recipients differently than other people?

A No.

MR. BRODSKY: Thank you. No further questions.

CROSS-EXAMINATION BY MISS BALEN:

Q Mrs. Gelman, do you remember having gone to a deposition?

A Yes.

Q On February 6, 1973?

A Yes.

Q Do you remember, at that time, being asked questions about whether you recommended Inez Stoney or not?

A I have it confused with the other applications, Mrs. Boyd, who was slim, and she was heavy.

Q You no longer have them confused?

A No. You have set me straight.

Q I have? That is, what I have told you?

A This one is slim and this one is not.

Q Do you recall what you said? Do you recall this portion of your testimony, Mrs. Gelman? Tell me if it's true, will you?

MR. BRODSKY: Page, please.

MISS BALEN: I'm sorry. 45.

Q Do you recall, in the course of the deposition having been handed an affidavit signed by Inez Stoney?

A Possibly.

Q Do you remember that affidavit told a story about how she tried to rent Lefrak Apartments from you?

A Can I see it again? May I see it again?

Q No. Let's go over this testimony and you tell me if it's true.

A I knew she tried to rent an apartment, yes, around the 14th.

Q And these are questions asked by your

attorney, Mrs. Gelman:

"Q Do you have any recollection that Mrs. Stoney filled out an application?

"A I've asked the young lady and all of you to let me see the affidavit so I'll recollect.

"Q OK. Just a minute.

"A I see so many people a day.

"MR. HAUBEG: (Phonetic spelling) Let the record indicate she read the application.

"A It's just what she said, a $200. man isn't enough.

"Q The question now is whether or not, having read that affidavit, you can recall if Mrs. Stoney filled out an application.

"A No. I couldn't let her fill out an application because - since the apartment is $295., I couldn't have a person earning only $200. a week as a guarantor."

Prior to being shown that affidavit in February 6, 1973, did you remember any details about the guarantor, Mrs. Stoney brought in as to why you may or may not have rejected him?

A No. I can't remember each customer. When a lease is signed, the lease is handed in. It's closed. When a person is rejected, we put in for a refund and that's it.

Q Didn't you say at the deposition on February 6th that when you found that Mrs. Stoney and her guarantor's applications were insufficient, you tore them up and threw them away?

A We don't throw anything away. I did not say that.

MR. BRODSKY: You know if you have something from the deposition, your Honor, I respectfully suggest it should be read rather than mischaracterized.

THE WITNESS: I think that's a mischaracterization of my testimony.

Q I'm about to read page 32:

"MISS BALEN: So you made an application?
"MRS. GELMAN: It was of no value.

"MR. BRODSKY: Did he fill out an application?

"MISS BALEN: You threw it away?

"MRS. GELMAN: We don't throw it away. We fill it out and if it's no good, we destroy it.

"MISS BALEN: You threw it away "

Did the application of Mrs. Stoney or the guarantor get sent on to the credit department?

A Yes. You have read it.

Q Pardon?

A I really don't recall. You said I threw it away but we don't throw it away.

Q Can you give me the names of all the people you saw in the course of your business on the day of your anniversary or the day before?

A No. I cannot remember all the names.

Q Mrs. Gelman, do you have a definite, a positive recollection of having spoken to Dorothy Boyd?

A Yes.

Q Could you describe Dorothy Boyd in as much detail as you remember?

A She was sort of on the heavy side.

Q How heavy?

A I can't say. I can't weigh people by sight.

Q That's all you remember about the way Dorothy Boyd looked?

A Dark, heavy.

Q Now, when a person comes in to see you about renting an apartment, do you, at any time, give them business cards?

A At all times when we send a person out to look for an apartment and decide where they want to go, we give them my business card and an indication of which apartment or apartments shall be shown to them by the superintendent of the building.

Q If you spoke to Mrs. Boyd and you permitted her to inspect an apartment, you would have given her a business card?

A I've already said Mrs. Boyd came prepared for what she wanted.

Q Yes. Did you give her your business card?

A Sure. Why not?

Q Do you remember giving her your business card?

A I don't remember. I hand them out frequently.

Q And at about or on the back of the business card would it have been written 1035 Clarkson, Apartment 4-C?

A If that's what she interested in, yes.

Q Do you remember it was Apartment 4-C?

A Yes. It was two small apartments for the size of the family.

Q You looked at an application, Mrs. Gelman?

A I beg your pardon?

Q Did you say you looked at an application?

A Did I look at an application?

Q In connection with Mrs. Boyd?

A You were asking me if I took an application from Mrs. Boyd.

Q I'm sorry. I understood you to say one second ago that you looked at an application.

A According to my conversation with her, when she came the first time, she had five children and she could not fill out an application for a 2-bedroom apartment.

Q But, before that, you had spoken to her about Apartment 4-C at 1035 Clarkson and you had given her her card?

A If I did, I asked for her family size.

Q But you would have given her the card and she would have inspected the apartment before?

A Why not?

Q You mentioned you remember Dorothy Boyd because she gave you a rough time?

A Yes, right.

Q In all the years you've been a real estate broker, have many other people given you a rough time?

A Yes.

Q In 1970, do you remember how many people gave you a rough time?

A I can remember many, many people are very, very nice.

Q When you told Mrs. Boyd she was over occupancy and she could not have an apartment for that reason, weren't you really saying if you had spoken to Dorothy Boyd and had known her family size, you would have told her that?

A I did speak with her and she told me her family size and I told her that and when she came back she had said, "I'm going to complain to all the agencies around; I want that apartment."

Q And many people do this to you?

People give you a rough time the same way? Is that right, Mrs. Gelman?

A In different ways.

Q Do you know what I mean, Mrs. Gelman, if I say East Flatbush Seventh?

A I don't know what an east seventh is but I know what Flatbush is.

Q Before the consent order, Mrs. Gelman, did you post listings of vacant apartments in your office?

A We always had a pad on my desk and Mr. Cuccia's desk that everybody doesn't see. When people came in, they would look, I guess.

Q Did you also post any floor plans on the wall?

A Always.

Q On which buildings did you post floor plans?

A Wherever we would post vacancies.

Q In 1969, which buildings would they be?

A That far back it isn't easy to remember. There are always some.

Q In October, 1969, do you remember having interviewed in connection with the renting of an apartment with Mrs. Robert Ginnane?

A Can you give me a few more hints? Maybe I'll recollect.

Q OK. I will. The apartment involved was at 333 East 92nd Street or was located in that building and the name I gave was Mrs. Robert Ginnane. This occurred in October, 1969.

Do you remember that Mr. and Mrs. Ginnane were a mixed couple and Mrs. Ginnane is black and Mr. Ginnane is white?

A We have many mixed couples. I can't single them out.

Q Do you remember in February, 1970 offering Mr. Barsdale (phonetic spelling), a black person, the apartments in the Purdue and the Syracuse buildings when he asked about apartments but did not ask for a particular location?

A I give the people their choice. It's always the tenant's choice.

Q Mr. Barsdale said you did not ask him to do that. He said he didn't know where he wanted to live.

Do you know Mr. Barsdale?

A No. I wouldn't know him if I saw him.

Q In July of '69, do you remember offering an apartment to Sandra Bush (phonetic spelling), a black woman, in the Northwestern, although she asked for an apartment in the Dakota?

A Yes. That, I remember.

Q Could you tell me what you remember about Mrs. Bush?

A The man was on vacation and I was unable to show her the apartment.

Q [illegible]s was in the Dakota?

A Yes.

Q Tell me again. You were unable to show it?

A I had a deposit on a certain studio apartment and the lady wanted the apartment. The superintendent of the building was on vacation and, therefore, I was unable to show it to her for two reasons:

1. We had a deposit; and

2. The superintendent was away.

Q Did you offer to tell her about vacancies that might come up in the Dakota in the future?

A Yes. I did.

Q Do you remembey in September, 1968, offering Jacequilene Cara (phonetic spelling), a black woman only apartments in East Flatbush when she requested apartments in Sheepshead Bay and there were apartments in Sheepshead Bay at the time?

A No. I don't.

MISS BALEN: No further questions.

MR. BRODSKY: No further questions.

THE COURT: You may be excused.

(The witness was excused)

MR. BRODSKY: The only remaining matter I have before I close, your Honor, is that I would ask the Court - you've already taken judicial notice of certain tables in the census, the 1970 census, of the population, and that it was done over my objection, but they are now in the record and since the Court has taken judicial notice and in light of that and while I still do object to doing it, I think I have to round it out.

Unfortunately, I don't have the separate units but offer this (indicating). from the same census.

With that, I would conclude our presentation.

THE COURT: Miss Balen, do you have anything further?

MISS BALEN: Yes.

Mr. Tobier, we have as a rebuttal witness.

MR. BRODSKY: I do want to make a statement about this, your Honor. I have had an opportunity to do some investigation about this report which your Honor knows came to my attention the first time last night.

I object to its use for several reasons which I won't even mention now but, particularly on this ground, your Honor:

This was something that was done in '68 or '69 and in connection with the action done I have in my hand a copy of a letter from the Commission on Human Rights.

It's dated November 22, 1968, signed by Robert Ewald (phonetic spelling), Director of Housing and it says that this is a letter to an attorney, at that time, for the Lefrak people.

"This is in reply to your request yesterday for further clarification of the City Commission on Human Rights proposed use of Forms CCHD-1.

These are the forms. These forms will be utilized solely for the City Commission purposes and will be held in strictest confidence.

The Commission understands that the Lefrak Organization maintains no records pertaining to race, color or national origin, that the forms will be completed from visual observation and that, therefore, absolutely accurate reporting may not be possible."

It's then signed by the Director of Housing. Used as a matter of public policy, if an organization like the Lefrak Organization is going to cooperate with commissions, in this particular case, the Commission on Human Rights or any other organization and then we find ourselves in a court proceedings where somebody on the other side is going to use this

against us, not to cooperate in these kinds of studies, particularly when it's supposed to be done on a confidential basis, particularly when they recognize these things are inaccurate, I think, as a matter of public policy, these things should not be introduced.

Beyond that, your Honor, whatever was done was done five or six years ago. What possible relevancy can it have here?

Even aside from the policy, the question of the Commission on Human Rights first doing this gathering of information, telling us it's being done on an absolutely confidential basis, doing it for whatever purposes they had at the time and finding ourselves in court on the other side of the case where this document is going to be put in evidence, supposedly, to prove something - I don't know - It doesn't involve welfare recipients at all.

THE COURT: Was that received in the other case?

MR. BRODSKY: No. It was just part of the discovery process. Apparently what happened

is, despite the fact that the Commission on Human Rights had said whatever was being done was being done on a confidential basis. They did give the report to the Government for whatever purpose, I don't know.

THE COURT: It had a file mark on it, did it not?

MR. BRODSKY: Yes. It was part of the discovery procedure because the way I understand it was we were trying to show the Commission on Human Rights had violated their trust to us and gave it to the Government.

THE COURT: Then, it's a public record.

MR. BRODSKY: I don't deem it to be public.

THE COURT: If it's a public record, anybody could demand to see it.

MR. BRODSKY: Not if I made an application. I mean, it wasn't filed by us. It was filed by the Government. I had no knowledge of it until last night, that the document had been filed in this court, if it had been done by the Federal Government, without our

knowledge or with our knowledge through some inadvertency.

THE COURT: In a case in which you were a party?

MR. BRODSKY: Yes, your Honor, but I had no knowledge it was filed as a public document, not every deposition.

THE COURT: Ordinarily, a party would come forward and say they'd like to have it sealed.

MR. BRODSKY: I agree with that.

THE COURT: It was not done so you couldn't be hurt.

MR. BRODSKY: That's where I disagree, your Honor, the way it came up.

THE COURT: You couldn't be hurt on the grounds you gave, if I let it in.

MR. BRODSKY: I'm sorry, your Honor.

THE COURT: If I let it in, you would?

Suppose you won't come forward because it's already in? Even if I struck it out, you'd still be in the same position. It's a public record.

MR. BRODSKY: I don't agree with that.

Even if it's a public record, your Honor, if a document is made particularly by a government agency and it's made, it says here, "will be held in the strictest confidence," then they violated the confidence by sending it to the Government .

As I understand it, that was the only thing we were trying to show in the discovery procedure.

Now that they violated their confidence because in some way that proceeding happened to have been made a record of this case, not this one, but the one preceding this one, not filed by us but filed by the Government, I don't believe that because it was filed in that way it should be admitted in this case, particularly in the nature in which it came up.

THE COURT: I don't agree with you. For whatever it's worth, I don't know what it is, what's going to be done with it, on the objections you've given so far, I see no grounds for it being withheld.

MR. BRODSKY: All that happened as far as it being filed. I don't consider this being filed. What happened is it was sent to the United States Attorney's Office apparently by the Commission on Human Rights.

It was produced as part of the discovery proceedings. That wasn't public. That wasn't a private proceedings.

The only markings on here are "received, U.S. Attorney, September 28, 1970, Eastern District of New York."

Now, the fact that the United States Attorney puts it in a court file shouldn't mean anything with respect to what we're doing in thisproceedings. That's all that happened with it.

THE COURT: It must be part of the file.

MR. BRODSKY: No. Apparently, the United States Attorney put it in the file. I guess the United States Attorney, the Government, can put anything into a public file.

MISS BALEN: Your Honor, it's an exhibit and clearly marked on its face Exhibit 1 to

answers to interrogatories. They are in this file and they are stamped "filed" but this is an exhibit, not the entire document, so only the answer to the interrogatories were marked in the file.

If your Honor wishes, I can look through it and find it.

THE COURT: I don't think that's necessary. Unfortunately, you didn't seal it. I think you came too late.

MISS BALEN: I'd also like to say this was furnished, under subpoena, by the Justice Department and Human Rights is under subpoena and I know of no privilege in which they can refuse to testify pursuant to a subpoena.

THE COURT: What do you want to do with it?

MISS BALEN: I want to have these authenticated and introduced.

THE COURT: What do you mean by that?

MISS BALEN: To have it said this is a study conducted by the Human Rights Commission.

THE COURT: It speaks for itself.

MISS BALEN: I don't know if your Honor wishes to examine it.

THE COURT: What does the title there say?

MISS BALEN: It's on forms from the Human Rights Commission.

THE COURT: What is on the title?

MISS BALEN: These are exhibit titles.

THE COURT: Plaintiff's answers to defendants interrogatories? Is that what this is?

MISS BALEN: Yes.

THE COURT: I suppose it's an answer to interrogatories put in the court's case?

MR. BRODSKY: Not our answer.

MISS BALEN: The Government's.

THE COURT: The Commission's?

MISS BALEN: The Government's.

MR. BRODSKY: Not ours.

THE COURT: The answers were part of the things made by the Commission?

MISS BALEN: No. The Commission supplied it to the Government who supplied it for this record.

THE COURT: Who made this document?

MISS BALEN: The Commission on Human Rights. They provided it to the Government who provided it for this file.

THE COURT: The Comm ssion made up this record and then they gave it to the Government and the Government filed it in the suit; is that right?

MISS BALEN: That's what I think is true, yes.

THE COURT: Is that what the record shows here?

MR. BRODSKY: No, your Honor. The record wouldn't show that. I don't think anybody from the Commission, from Human Rights, can authenticate that document.

THE COURT: It says "received." I don't know who received it. I suppose it must have been received in the record or it wouldn't be marked January 16, 1969.

MISS BALEN: I think those are the Commission's notations. They received the report and they marked it.

MR. BRODSKY: They received the reports and didn't give a marking.

THE COURT: Did the United States Attorney? Was there a file mark on it by the Court?

MISS BALEN: You see, it's a matter of finding it. There are three answers to interrogatories, the main one and two supplemental ones and it's a question of finding the one to which it was an exhibit.

THE COURT: Who were the interrogatories aimed at?

MR. BRODSKY: The Government. In other words, interrogatories we asked of the Government so that the Federal Government produced that document.

THE COURT: Why didn't you ask for it to be sealed then?

MR. BRODSKY: I don't know why. It would only be speculation. We had no idea it would be filed in the court.

THE COURT: I'll let it it as a response to your own interrogatory.

MR. BRODSKY: Your Honor, if we ask a

third party a question and the third party's response to a question contains the answer to a third party question, in this case, the Government, it is something that can't be authenticated and admitted in this case.

In other words, it's not something we said. It's something that we authenticated. We asked the Government a question and in response to the question, the Government came up with this so I don't think it's admissible in this proceedings.

That's all we know about this document.

THE COURT: It was made by the Commission in the regular course of their business.

MR. BRODSKY: I don't believe so, your Honor, absolutely not,-I don't think, -I don't think anybody from the Commission can say that the Commission on Human Rights - (interruption)

MISS BALEN: Your Honor, Mr. Brodsky read the letter from the Commission.

THE COURT: They evidently knew about it and they said it was going to be secret.

MR. BRODSKY: They knew about it but I doubt anybody from the Commission can authenticate it no how, as to how it was done. There's a man from the Commission - he's here - I don't think he could possibly know anything about the figures in that document, I don't believe.

THE COURT: That's not the question. It appears to have been made and there are receipts on it marked received and it has the name of it. It's a file marked, headed "Commission on Human Rights" and while it's not signed by anybody, all of them seem to be the same, on the same form, CCHD-1's form.

I suppose that's their form.

MISS BALEN: The letter specifically refers to a plan to make a study with the use of the forms and what was hoped to be obtained by the Commission as the result of the study.

THE COURT: No. I don't know what it's worth but I'm going to let it in and I'll see what it's worth.

MR. BRODSKY: May I offer the letter which I read to your Honor, as an exhibit?

THE COURT: Any objection to it?

MISS BALEN: No objection.

THE COURT: Mark it.

(A letter, dated November 22, 1968 of the Human Rights Commission, as previously described, was marked in evidence as Defendants Exhibit Z)

MISS BALEN: Your Honor, at this time, as an additional exhibit, I wish to introduce into evidence a copy of an original subpoena under the seal of the Clerk of this Court that was served on the New York City Human Rights Commission.

The date of the subpoena is October 14, 1970. The subpoena requires the production of the following documents:

Statistics showing racial composition of buildings in the Borough of Brooklyn as prepared for the New York City Commission on Human Rights by the landlord or managing agent other than those statistics by Lefrak Managing Corporation, which are already in our possession.

CCHD-1 Forms or any other forms used by the Commission.

Implied is the acceptance by the defendants of the authenticity of the record previously submitted which I submit are the records just admitted into evidence.

MR. BRODSKY: Your Honor, this is the first time in my experience that when somebody writes a subpoena to somebody else, he implies by writing what he calls for is accurate and even exists. I never heard of that and I object to that.

MISS BALEN: The documentation of documents is simply that it comes from the records of a government, in this case I believe the subpoena that authenticates the record we have in evidence.

I think the letter from Mr. Ewald from the City Human Rights Commission to the defendant demonstrates a study was carried out in the regular course of the Commission's business and if your Honor would accept the marking of a subpoena and its introduction into evidence.

THE COURT: Well, the subpoena was issued out of this Court, wasn't it?

MISS BALEN: Yes. Under the seal of the Clerk of this Court.

MR. BRODSKY: The subpoena was served but it doesn't show anything about an authenticity.

THE COURT: I don't know about the authenticity but it seems if it was returned and filed and made part of the record the evidence is to the contrary that it was given in response to interrogatories and it has nothing to do with the subject.

MISS BALEN: The interrogatories were September 18, 1970, the date filed in court and the marking on the file, receipt of this subpoena, is dated October 18, 1970 and it refers to exhibits or investigations, rather, already conducted showing not only knowledge on the part of the defendants but recognition that it was done by the City Human Rights Commission.

The Human Rights Commission witness is here to testify this subpoena was taken from

its regular file.

THE COURT: What about this (indicating)?

MISS BALEN: Yes. He is here to testify this is a record of correspondence to show they have done that and submitted the original study to the Justice Department and they are still conducting such study.

THE COURT: Do you stipulate to that?

MR. BRODSKY: I haven't the vaguest idea. I certainly couldn't stipulate to that.

THE COURT: If it's true?

MISS BALEN: Would it be admissible?

MR. BRODSKY: No. I don't believe the Commission on Human Rights conducted that study.

THE COURT: She just said the man will testify that he did.

MR. BRODSKY: I think she's mistaken.

THE COURT: Let's hear the witness. Of course, all of this could have been worked out before we even got to trial.

MR. BRODSKY: I'm sorry, your Honor. The first time I knew that this report was going to be furnished us in this trial or existed

was last night. I couldn't have worked out something that I didn't know about.

THE COURT: That's strange. It was in the interrogatories.

MR. BRODSKY: There are a lot of cases in the office. I don't know every answer to every interrogatory. I had nothing to do with that.

THE COURT: Didn't you go through the file in the other case?

MR. BRODSKY: Yes, but that was here, apparently. We don't have that study in our office. As I say, it was produced by the United States Attorney and filed in the court's file.

THE COURT: In answer to your interrogatories. You don't have a copy?

MR. BRODSKY: Apparently not.

THE COURT: That's strange.

DANIEL TOPPER, after having been first duly sworn, testified as follows:

THE COURT: Give your name for the record.

THE WITNESS: Daniel Topper.

DIRECT EXAMINATION BY MISS BALEN:

Q Mr. Topper, are you employed?

A Yes. I am.

Q In what capacity?

A I'm an attorney with the Commission on on Human Rights.

Q And, yesterday, did you receive a subpoena requesting the production of certain documents to this Court?

A Yes. We did.

Q I show you these lists recorded on forms headed by the title "City Commission on Human Rights" (indicating) and I ask you if those forms were prepared by the New York City Commission on Human Rights.

A These are the forms used by the New York City Commission on Human Rights, yes.

Q And does the City Commission on Human Rights do studies of buildings and landlords and racial and ethnic compositions of those buildings using those forms?

A Yes. We do.

Q For how long has the Commission been doing such studies?

A I can't say for how long. I know since 1968.

Q Are those studies still going on?

A Yes. They are.

Q Are they done, to your knowledge, with respect to any particular complaint or any individual complainint?

A Not necessarily, no.

Q Do you have any knowledge whatever from the records of the City Human Rights Commission of who did this particular study within your organization?

A I can only say that the records indicate that it was either Robert Ewald or Franklin Graham, both of whom were the heads of the Housing Commission of the City Commission of Human Rights but I can't say which one.

MISS BALEN: I have no further questions, your Honor, but I would offer the documents in evidence as authenticated, as having come from the records of a City agency and as having been prepared pursuant to a lawful investigation.

MR. BRODSKY: I object, your Honor.

THE COURT: You may ask the witness.

CROSS-EXAMINATION BY MR. BRODSKY:

Q Mr. Topper, how long have you been with the Commission of Human Rights?

A Six months.

Q So all you know about this report is a copy in your file?

A At most.

Q Do you know whether any investigators of the Commission on Human Rights went out to different buildings and talked to people?

A I don't know from first hand knowledge.

Q Do you have any idea what kind of an investigation was conducted in order to come up with whatever is in here?

A I have a memorandum in my file.

Q Do you know of your personal knowledge?

A Personal knowledge, no.

Q And, of course, you didn't participate at all in the investigation?

A No. I did not.

Q And you don't know who did?

A I wasn't there at the time, if that's what you mean.

MR. BRODSKY: No further questions.

MISS BALEN: May I ask one or two other questions?

THE COURT: Yes.

REDIRECT EXAMINATION BY MISS BALEN:

Q Are there any letters or other written communications in your file from the City Human Rights Commission pertaining to this particular study?

A Yes. There's a memorandum in the file, dated August 7, 1970.

Q '70?

A '70.

Q And what are the contents of that memorandum?

MR. BRODSKY: I object to it, your Honor.

THE COURT: On what grounds?

MR. BRODSKY: It has to be a hearsay memorandum. I'm sure of that.

THE COURT: It's a memorandum made in the regular course of business of the agency. Was it made by an employee of the agency?

THE WITNESS: A former employee.

MR. BRODSKY: I don't think this witness

knows. All he knows is he picked a piece of paper from the files.

THE COURT: But he is an employee and it has to do with an investigation. He already testified what happened. I don't know why it wouldn't be admissible.

MR. BRODSKY: I don't want to make a big thing out of it, your Honor, but I want to note my objection.

THE COURT: You can have an exception.

Q Mr. Topper, where did you find that file that you brought?

A This was in the Housing Department's files. It's a file termed "Lefrak."

Q In the New York City Human Rights Commission's Office?

A In the Human Rights Commission Office.

Q Could you tell us the contents of the memorandum that's in the file?

A It's a memorandum from Louis Morris (phonetic spelling), who is the Director of Investigations for the Director of the City Commission on Human Rights, to Preston Davis (phonetic spelling), who was and is the

Executive Director.

Shall I assume that's the memo?

Q Yes. Why don't we start with that?

A It begins with the first contact with Lefrak, May 16, 1968, and it goes through negotiations with Lefrak for the Data CCH Files, in the forms here, and that there was a decision by Lefrak, by them, not to cooperate with the investigation.

It talks about various conversations and also between the Housing Division Office and the attorney for Lefrak, Mr. Mokotoff.

It states that in January of 1969 the forms began to arrive from the Lefrak Organization and then it goes on to say about meetings between Mr. Wald, (phonetic spelling), who is the head of Housing City Commission and a member from the Justice Department.

It goes on to state that the Justice Department and the FBI were looking into Lefrak and the files. The CCHD forms were shown, the complainant's files, and then a summary of the research was made to the Justice Department with the approval of Frank Graham (phonetic spelling), who was the head of the City Commission of Human Rights.

It goes on to say that the CCHD-1 forms were forwarded on to Mr. Fleisher (phonetic spelling) of the Department of Justice. That's basically.

It goes on into the individual complaints against Lefrak.

MISS BALEN: Thank you, Mr. Topper. No further questions.

THE COURT: Do you have any further questions?

MR. BRODSKY: No, sir.

THE COURT: You're excused.

MISS BALEN: At this time, I offer the list in evidence.

MR. BRODSKY: I object, your Honor.

THE COURT: It will be admitted. You may have an exception.

(A list of names was marked Plaintiff's Exhibit 30-A in evidence.)

MR. BRODSKY: Shall I leave it in the file?

THE COURT: It's in the file of this case now. I suppose you have to leave it here. You can put a notation in the other file that it's in this file.

MISS BALEN: Your Honor, I have a copy of these lists. Since we have insurmountable decisions about transferring files, I put a notation in the other file that it's in this file.

I have Xerox copies which I can introduce instead but they have not been compared by Mr. Brodsky.

MR. BRODSKY: I can prepare them later. That will be no problem.

THE COURT: Very well. You can compare it and you can substitute it.

MISS BALEN: If I may introduce this as Exhibit 30 (indicating).

THE COURT: Is that a copy?

MISS BALEN: Yes.

THE COURT: Mr. Brodsky can compare it. Do you have anything further?

MISS BALEN: No, your Honor.

THE COURT: Mr. Brodsky?

MR. BRODSKY: No.

MISS BALEN: Plaintiff rests.

MR. BRODSKY: Defendant rests.

THE COURT: Shall we have the arguments now? Miss Balen, do you want a 5-minute recess?

MISS BALEN: All right.

(Whereupon, the Court was in recess from 11:35 a.m. to 11:45 a.m.)

THE COURT: Very well, Miss Balen, how long do you want?

MISS BALEN: I think I'll need at least a half an hour.

THE COURT: Very well, Thirty minutes.

MISS BALEN: In this trial, plaintiss has shown, we believe, the following:

That the defendants have applied both a blanket exclusion against renting to public relief recipients and at a later time an income requirement, which excluded all public assistance recipients.

Both exclusions have been defined particularly under Title 7.

In addition, plaintiff has demonstrated the deplorable housing situation in the city and have the named plaintiffs, in particular,

to show the condition of exclusions by the defendants in the class of welfare recipients and widespread discrimination has been identified as a cause of the welfare recipients' housing problems.

I add again that is to show the consequences of the exclusions such as that practiced by the defendants.

Now, Dorothy Boyd a black welfare recipient, testified in 1970, all in 1970, she lived in a hotel in three rooms with five children, that the facilities were inadequate but that she was paying $88 a week for those facilities.

She testified she made attempts to rent apartments in the City of New York and that she became completely frustrated.

The landlords said they would not rent to her because she was a public assistance recipient and the only apartments she could find were those in terrible condition.

In July, 1970, she made an attempt to rent a Lefrak Apartment. She went to the rental office. She inquired about a vacancy.

She inspected an apartment and attempted to rent it only to be told "We do not take public assistance recipients.

That was true and confirmed through a telephone conversation with Mr. Richter, the defendant's vice presidemt for management and that telephone conversation had taken place the same day.

Mrs. Boyd had been refused because she was a public assistance recipient. No application was taken from Mrs. Boyd. She was not told she could get a guarantor nor did she find one.

She testified her sense of outrage and disappointment and having been refused the apartment and her belief, because she was a public assistance recipient, which were related.

She also testified she is presently living in an inadequate substandard dwelling and she is not satisfied because of conditions in the place such as no heat or hot water and for those conditions in that apartment she is paying $265. a month, the same rentals

that were to be charged for the Lefrak Apartments.

Inez Stoney testified as to what the housing conditions were where she was living in during 1972.

She testified about her search for apartments all over the City of New York. She testified concerning how she had been refused apartments many times because of being a welfare recipient, particularly in white class areas and that the apartments offered to her were those in bad conditions.

She testified that she attempted to rent a Lefrak Apartment and that she made three trips to the rental office in an effort to rent that apartment.

She was told she'd have to supply a guarantor. She was not permitted to fill out an application and having been told or having told she was on public assistance when she applied, she was told there was not sufficient income.

She went back again to try to rent an apartment and she was told it was rented when,

in fact, it was not.

Later, testimony by Mr. Cuccia has established the apartment was not rented at the time Mrs. Stoney returned to find out it had been and it certainly had not been rented on March 25th and 26th when she made her inquiry.

In addition, Mrs. Stoney had been given the notice to welfare recipients, distributed by defendants, which contained reference to a government guarantee and attempted to obtain a government guarantee through the Department of Social Services and was told no such guarantees were available.

Mrs. Stoney testified that, ultimately, that the apartment she was living in during this period of tenancy was destroyed by fire.

Thereafter, she lived in a hotel for four months and only in 1973 was she able to obtain an apartment.

Shirley Lee, a third black witness and welfare recipient, testified as to what the housing conditions were that she was living in and that she wished to rent an apartment, that

she has been looking for an apartment for two years and has not found one to rent. She was not rented an apartment because she was a welfare recipient, primarily, in white areas.

She testified as to a newspaper article which stated defendants would rent to welfare recipients.

She had, indeed, gone to one of the defendant's buildings and sought to rent an apartment and she was told if she was on public assistance, she would have to obtain a private guarantor.

She did obtain such a guarantor and testified it was on her mother's recommendation and she did not know the guarantor very well.

Ultimately, the guarantor was rejected, although it seems she did not know one way or the other that the guarantor did not give truthful information.

However, no information concerning her income was taken on her application for the Lefrak Apartment and all the defendants did say in her application as to income was "public

assistance."

Mrs. Lee testified she has still not found an apartment to move in.

Martin Burdick, who is the Director of the Public Assistance Program for the City of New York, testified that the Department of Social Services applies or enforces no upper limits on the amount of rent it will pay for public relief recipients and testified or acknowledged that the Public Welfare Department has the responsibility to provide shelter for recipients through the payment of rent.

He testified the recipients obtain their rents through the Department of Social Services, that the recipient pretty much locates his own apartment and then goes to the Department of Social Services and seeks to have the rent approved but only after the recipient has received an oral commitment, at least from the landlord to rent the apartment to him.

Now, Mr. Burdick also testified that the Department of Social Services pays the rent arrears of any recipient who fails to pay the rent.

Then, in the future, in the form of a two-parties check, it is assured that rent will be paid.

Mr. Burdick testified they are still doing this, issuing two-parties checks and have been doing so for some time.

Mr. Burdick introduced Department of Social Security records to show that 480 welfare cases are presently living or, rather, as of May, 1973, are living in Lefrak buildings.

Other testimony, primarily with Mr. Richter for the defendants show the defendants do not know that these welfare recipients are there.

I admit the leases are ambivious. They do not give names or other details but plaintiff has offered them for two reasons:

First, they raise the inference that if defendants do not know public recipients,-do not know they are in such numbers in there in their building, then the welfare recipients must be no different than other tenants.

In conjunction with the defendants' records kept during a two-year period, on a consent order, which has also been introduced showing 10 public assistance recipients were accepted in two years and I submit there is, therefore, an inference that those 480 recipients could not possibly have been accepted as tenants during this time.

Robert Greenblatt of the Department of Social Services testified concerning the statutory provisions for the guarantor of the rent by the Department of Social Services.

This provision became important to this case as a result of an amendment to the effect that if a public assistance recipient was unable to pay rent there would be some provision.

Mr. Greenblatt testified it is not funded and it has never been implemented and they have no intention of doing so.

What's more important, he testified the Department of Social Services does not co-sign leases.

Edward Kopp of the Department of Social Services testified as to the major efforts to re-house public assistance recipients in the last two years, living in hotels, and he demonstrated a willingness of the Department of Social Services to spend large sums of money to relocate public assistance recipients.

He showed even with the offer of a finder's fee private housing all over the city refused to rent to public assistance recipients, in spite of all the incentives.

We've had testimony from an expert economist and statistician, Dr. Gary Bickel. Dr. Bickel has demonstrated through his testimony as to the figures of the 90% rule, the income requirements required and applied by the defendants.

He has demonstrated in an extremely expressive way and his testimony, I submit, is uncontroverted.

He has measured in his work and has testified as to the results of the exclusion rate of the 90% rule.

That is to say as to how many people are excluded by race and ethnic background and how many people are included.

What Dr. Bickel testified it meant was how many people would have no opportunity whatsoever to rent one of the defendants' apartments.

Now, Dr. Bickel testified that the rule, as applied by the defendants, was an unjustifiable rule from an economic point of view and he suggested a means of constructing a more reasonable or justifiable rule.

A particular point that Dr. Bickel made was that the rule was unreasonable in part because it failed to take into consideration the different sources of income and there was a failure to base the rule on actual disposable income.

Dr. Bickel testified that the 90% rule, as used by the defendants, was that, in fact, the rule of thumb was equivalent to a 25% rule. The rule of thumb is the 25% rule.

What he found was 39.1% of all rented households are rented to those.

What he found was startling: He found that only 18 to 20% of all New York City rented households would be eligible for a Lefrak Apartment under the 90% rule, 20% of blacks, racially and ethnically mixed 24% and only 2.6% of Puerto Ricans.

No matter what standard Dr. Bickel used, he came out with the same differential.

In addition to the statistical demonstration made by Dr. Bickel, we have had introduced the applications of public assistance recipients made during the period of the consent decree.

Those applications show that of the white and black public assistance recipients applying, a far lower rate was shown.

We conclude from the data presented that even among those who were screened carefully and finally reached the application state blacks and Puerto Rican recipients are still less likely to rent their apartments.

There has been testimony that income is not measured by grants received and the defendants do not take such income into account.

There is a special situation for public assistance recipients as opposed to the rest of the population with regard to ability to pay rent because of the unique budgeting by the Department of Social Services and because of all these special grants and incomes they receive.

Dr. Tobier testified the 90% rule was reasonable but offered one basis for his opinion and that was it was used for a long time. Essentially, that is the reason offered by the defendants.

We had testimony from Professor Indik who has written a book offered to your Honor, concerning welfare housing and the other book was on urban housing, "The Urban Housing Dilemma."

It contained research on housing of the welfare recipient. He testified that they lived in the worst old houses in New York, that the buildings were poorly maintained, that they are segregated into neighborhoods, that there is widespread discrimination against them.

Professor Indik suggested this is because of racial status and because they are welfare recipients. Dr. Indik has supplied us with information showing that a welfare recipient's attitude towards himself and his future is much affected by the quality of his housing and that where housing is poor, he is not optimistic about his future.

Phyllis Spiro has had broad experience in housing discrimination and testified as to how widespread discrimination by landlords is against public welfare recipients throughout New York City.

From her own experience, she felt it was due to discrimination on the basis of race.

I think what we have shown is that public assistance recipients have enormous difficulty for any housing in this city. They have become New York City's worst ghettos.

I would like to make up certain points concerning what we are not claiming, factually, in this case or not attacking:

We are not attacking occupancy standards applied by the defendant;

We are not attacking the rights of defendants to do a credit check of applications.

All we are attacking is the 90% rule and a black exclusion policy and when I refer to the 90% rule I refer to it in conjunction with the guarantor requirement as applied to public relief recipients.

I'd like to make one other point:

They have repeatedly stated they treat everyone alike, that everyone is subject to the 90% rule.

I submit it's fine to treat everyone alike but when you treat someone who is not alike not alike it's discrimination.

As a last point, I'd like to say I don't believe the defendants have been able to refute any of the plaintiff's evidence and much of it they have not attempted to refute.

As far as the case and the law upon which we rely, we have taken a very orthodox and conservative definition submitted in briefs

and motions submitted.

We have shown as we are required to show that more blacks and Puerto Ricans are affected by the defendants practices than whites and, therefore, it has a racial effect.

THE COURT: What standards should I apply? I take it your attack is under the due process clause.

MISS BALEN: Dr. Bickel made a proposal equivalent to a 49½% rule. Dr. Bickel testified he would not dun public assistance recipients and had not developed a rule to measure their rent-paying ability.

We have taken the position, with respect to the way to measure their rent-paying ability is not whether the Department of Social Services will provide for and pay their rent to guarantee it.

THE COURT: Then it boils down to reasonableness or what?

MISS BALEN: After racial effects have been shown, whether the practice is supported by business necessity has been determined so

if the rule applied by the defendants is not supported, I submit it's in violation of the Fair Housing Act. I have to submit they have offered no explanation for their rule other than the rule is one they have always used.

THE COURT: The rule is the only issue in contest here?

MISS BALEN: Because the plaintiff was denied because of blanket exclusion, a blanket exclusion policy. That question is also in issue as to that.

THE COURT: I mean the case raises the question of whether or not this rule is reasonable?

MISS BALEN: Yes, your Honor.

THE COURT: And you say I should apply standards in what way? What standards should I apply or precept? I know you say business requirements and things of that kind. What else?

MISS BALEN: As to public assistance recipients, we take the position that the only rule that applies to them is the rule which

finds out whether the Department of Social Services will approve their rent and only that.

If the Department of Social Services approves the rent we submit the evidence is clear the recipient will be able to afford the rent. That is, they will receive the rent from the tenant.

If they fall into arrears, they may apply for the arrears.

THE COURT: You think it really amounts to if they approve it, OK, and if not, why they will not accept the application? Is that right?

MISS BALEN: Yes, your Honor. As of today.

THE COURT: Do you have anything else?

MISS BALEN: By way of a financial standard?

THE COURT: Any other standard that you think.

MISS BALEN: Assuming the rule were altogether unreasonable, it might be necessary or the defendant might find it necessary to have a ruling

which they can apply to everyone.

Dr. Bickel testified the way one would go about setting such a rule is to include as many people as one possibly could to assure a landlord a decent return on his investment and Dr. Bickel proposed a 49½% rule on the basis of those standards.

THE COURT: That's without the rule of 50% of the population now, isn't it? Is that the ratio?

MISS BALEN: No. It would not be precisely 50%. The rent/income, rather that 49½% rule would be equivalent to 37½% .

May I say one other thing? We would not agree that a 37½% income ratio be imposed on welfare recipients.

THE COURT: I take it the best way would be to leave it up to the agent?

MISS BALEN: Yes.

THE COURT: And if the company decides that it must have some type of rule that it might be the most liberal rule possible under the circumstances of the particular case?

MISS BALEN: Yes, your Honor, consistent with the particular business needs as expressed by the defendant to ensure the ability to pay rent.

THE COURT: Very well, unless you have something else?

MISS BALEN: I was going to go into the legal argument, your Honor.

I think it's very obvious. There is one point I wish to make that is not made in the trial brief. That is, in the Ballard case (phonetic spelling) and the Mal case, which also applied to welfare recipients, the race issue was in issue as to whether there was any racial effect or discrimination and the Court did not reach that issue.

I would like to express a rent decision cited in the brief in the Findrilakis case (phonetic spelling) concerning an attempt by the Federal Government to impose a 35% rent/income ratio on welfare recipients in 236 Housing and the Court decided such a rent/income ratio improper and illegal and said that had absolutely

no connection with welfare recipients to pay rent, that it completely distorted it and did not take into income consideration the non-cash income and other sources of income that may have been available to him.

I have no further argument.

THE COURT: Very well.

Mr. Brodsky?

MR. BRODSKY: We are dealing here with a private landlord and I think that's important because the cases Miss Balen relies on the way I understand them, then is that the welfare recipients were in some kind of a state subsidy, some kind of public housing, some area in which the economic standards became the criterion.

You don't get into the racial issue. It's on the economic standards. In this case, the way I understand it, although the class that has been defined here is the class of welfare recipient in the metropolitan area, that would mean the plaintiff here and Miss Balen is representing not only blacks and Puerto

Ricans but she's also represe. ing white people who may be on welfare.

Of course, the evidence didn't really turn out that way in the sense Miss Balen offered no evidence as to what is happening to white people who were included in this class, who happened to be on welfare and, of course, who were treated the same way as the blacks and Puerto Rican people.

Again, to put it in context, Miss Balen cited Male v. Crossroads and we're not involved in that kind of a case which involves subsidy. In Male v. Crossroads they talk about economic standards.

They were not telling you to treat the classes as a whole and we're not telling you you've got to take every welfare recipient or other kind of person. What they say in those cases is the opposite of what Miss Balen is saying here.

She's saying to treat welfare recipients differently than anybody else and what the Court says, which we don't even get to, because we're

private landlords, and what the Court said is to take every individual and treat him, whether he is on welfare or not, treat him the same as every other individual so that, for example, if the welfare recipient doesn't meet an economic standard, as long as you're treating him the same as anybody else,"that's all we ask you to do; we're not telling you to take all welfare recipients into your buildings or any other class of people into your buildings; just treat them the same."

I respectfully suggest, in the testimony in this case, the only evidence by anybody on both sides is that every person who came into our office was treated the same.

Out of this class, they had three witnesses, one of which said that this is the only landlord in the City of New York that even talked to her or took her application and that's what we did and we treated her like everybody else.

As far as Mrs. Boyd was concerned, she was over occupancy and even Miss Balen said

she was not challenging the occupancy standard.

As to Mrs. Stoney, as far as she is concerned, she couldn't meet the financial requirements.

If I may, I would like to say a word about the Fair Housing Act. Although it gets a little confused about the class, the plaintiff is representing something it applies but they are chiefly concerned with white people but taking that aside for the moment, talking about the Fair Housing Act, first we recognize our obligations under the Fair Housing Act to treat blacks and whites equally.

What the Fair Housing Act says is we shouldn't discriminate against anyone on the basis of color. I'm going to get into that evidence in a minute as to what the testimony has said.

First, I think it's important to put in context what I believe this plaintiff would have to prove under the most liberal reading of the Fair Housing Act and in this case it surely would be a case of first impression

because what Miss Balen is doing is relating the Fair Housing Act to the Fair Employment Act where there are cases under the Fair Employment Act where there is a case like the present case, which Miss Balen referred to, which is so far different from this case - for example, there were no black people working for a company and in order to exclude blacks what they did was to say that porters had to have a high school education and what the Supreme Court ultimately said is in effect how do you relate with that, you're not hiring blacks in the past?

That's the kind of a case Miss Balen relies on and asks your Honor to superimpose to the Fair Housing Act and to apply to this case.

I want to show how this is so far different. First of all, she would have to prove:

1. That we have been discriminating against welfare recipients based upon their rights, if she is going to make out a case under the Fair Housing Act, not to discriminate against welfare recipients because they are welfare recipients.

2. She would have to show the basis of race or color and there isn't a shred of evidence in this case, black or white, to show we treated them differently than anybody else.

There isn't a shred of evidence to show we added up the welfare recipient's income different than for a white person or that we accepted the white person differently from the blacks or Puerto Ricans.

For that reason alone, there is no case of discrimination in housing under the Fair Housing Act.

Beyond that and I'll be very liberal and assume that Miss Balen got beyond the financial element and this isn't a housing case but let's assume she wants to make it something like an unfair housing case.

The next thing she would have to do, to show, is there has been a racial impact as the result of what we're doing.

Your Honor, where is the racial impact as far as the evidence is concerned in this case? In proportion, we have more of a percentage of

blacks and Puerto Rican families living in our buildings than the proportion would indicate in the City of New York. That's on the basis of simple arithmetic.

THE COURT: Her point was that the rule that you laid down had that impact with reference to blacks and Puerto Ricans.

MR. BRODSKY: That's what she says. I understand that.

THE COURT: There's quite a difference then in just a statistical observation of whites and blacks.

MR. BRODSKY: I don't think so, with all due respect to your Honor. If a rule is supposed to have a certain impact, then the impact of the rule would be to keep out the blacks and Puerto Ricans. That would be the impact of the rule.

THE COURT: But without the rule you might have more. You might have a higher percentage.

MR. BRODSKY: Without the rule, we might have more, certainly. With no rule at all, I'm sure we'd be bankrupt.

THE COURT: I don't know. It's not in the evidence. Suppose you were to add in the other elements of income such as the food stamps and medical and things like that? What effect would that have?

MR. BRODSKY: There's testimony on that, your Honor. If you remember, Professor Tobier testified to that, as to what the difference would be. If you take the actual numbers in our buildings, we can't, first of all, without those benefits, because as your Honor knows, those benefits are not in this chart.

THE COURT: You didn't ask about that.

MR. BRODSKY: Sorry?

THE COURT: I say you did not ask about those benefits.

MR. BRODSKY: No, no. That's correct but I think the question is what would happen.

THE COURT: What about that in and of itself, the facts on your application?

MR. BRODSKY: I understand your question. I'd like to address myself to that.

Starting out from the beginning: What are

we required to do to treat everyone the same?

A person comes in and we say to him: What is your income? He tells us. Just as there is nothing in the form that says, do you get food stamps, there is, because everybody is different and everybody does have a different kind of income, what the economists call income in kind, many people, not just welfare recipients, but many people get income in kind.

THE COURT: According to the testimony of the witnesses, yours was more aimed at the ordinary income, like what you get for your work.

MR. BRODSKY: Yes.

THE COURT: Then you say "other income." That would mean, What do you get out of your savings deposits or out of your stock returns or out of, perhaps, your child working or your wife working, something like that. It's all related to earnings from work.

Now, they say recipients, as I understand it, were in a somewhat different category. If I work and do not get any welfare, I don't get any stamps and I don't get any medical. I have to pay.

MR. BRODSKY: Not necessarily.

THE COURT: I pay it pretty h. h. It just went up the other day.

MR. BRODSKY: I'm sure, your Honor, for example, in these buildings the people renting apartments have been the working class people, members of unions and for the most part, the Blue Cross and Blue Shield benefits are paid either by unions or employers through employer-employee plans.

Many of these people, working people, now get their insurance paid by their companies or their unions. Some of them have pensions so they don't have to worry so much about saving as much today because they know, eventually, they'll have a pension and the welfare recipient gets food stamps and some kind of medical care.

THE COURT: When you have a 90% rule, I suppose you have to add in everything you get. You would assume that, wouldn't you?

MR. BRODSKY: Of course. Let me address myself to that right now because there's a simple answer to that because we're not in an

academic exercise. The point I was about to make is it is determined in connection with the principle that evidently we have.

Mr. Tobier added that the welfare recipient would get, more or less, depending on the size of the family, $300. more a year, because of food stamp benefits.

Even if you added $300., add that to all of the benefits the welfare recipient gets or receives, they still fall so far below the standards we set.

THE COURT: Suppose in addition to that, I was able to get an exception from the agency? In other words, I'd go to the agency and say and this is what the witness testified to, that I tried to get the rent at that price but I can't do it and it will have to be $50. more and they say that they'll look into that and then come back and say, "Well, you're right. We will give you the extra $50."

MR. BRODSKY: OK. We've assumed that on the chart that Professor Tobier testified to. So, I think that aspect is out of the case.

THE COURT: If he paid that, he'd be eligible?

MR. BRODSKY: No, sir.

THE COURT: If you assumed the agency gave him that much rent every month, assuming before he wouldn't have been eligible because of the 90% rule?

MR. BRODSKY: No because it's so far below the 90% rule.

THE COURT: That's the point, the whole point. If the agency gave him a sufficient amount. They might raise it.

MR. BRODSKY: They won't raise it beyond the rent he paid.

THE COURT: No. They wouldn't raise the rent.

MR. BRODSKY: We've assumed it in the charts we've prepared and testified to by Professor Tobier. We've assumed that the exact amount of the rent was going to be paid to the welfare recipient.

THE COURT: The only thing I'd like to get more light on is whether or not the 90%

rule is a reasonable rule. Are there other avenues you should explore rather than just having that flat rule? If you don't have the 90% rule, you're out? I know you have some exceptions. I heard the witness say this morning something about that.

MR. BRODSKY: Let me address myself to that.

As to whether or not our rule is reasonable under the circumstances - I mean for the poor, to reach a point of saying you better have a 5% rule or a 40% rule or a 60% rule -

THE COURT: I'm not about to do that, if I rule at all in that area. That would be up to you. I wouldn't say what it should be.

MR. BRODSKY: It was a question of settling a law suit and they were saying, "Look, why don't you try to make it a little easier for a poorer society since they pay less taxes and maybe use it deducting from the 25% rule?"

THE COURT: I don't think it's proper for me to say that the 90% rule is invalid because it's unreasonable but if you had a 49% rule or

a 37% rule. I think it would be beyond my duties. I have to pass on what we have here, not to pass on what we'll have tomorrow.

MR. BRODSKY: Getting to the reasonableness of the rule, I do suggest although you'll never get it in this case, but let's assume you do -

THE COURT: Yes.

MR. BRODSKY: First of all, I think for the Commission to testify for the plaintiff - no - as a matter of fact, he didn't - I'm sorry.

It's a matter of common sense and our own man testified that a landlord is surely entitled to set some economic standards and it's not a question of like a fellow who is poor and having a high school type education but it's common sense. You don't need an expert on this.

THE COURT: He has to exercise reasonable judgment, where he can make a profit.

MR. BRODSKY: Not only that but if there's going to be people to sign a 3-year lease, for example, he'll have to have reasonable expectation to expect the rent will be paid for the

next three years.

THE COURT: Do you have anything else you'd like to point out?

MR. BRODSKY: No. I was going to talk about - no - that's it, your Honor.

THE COURT: Would you like to file a brief on the law?

MR. BRODSKY: Sure.

THE COURT: Miss Balen, would you like to do that?

MISS BALEN: I believe my brief is very clear.

THE COURT: I can read it in your trial brief. Why don't you file one and you can answer it? When can you get it in?

MR. BRODSKY: I would say within 10 days.

THE COURT: Very well. She is not going to file one. You can get her position or brief.

MR. BRODSKY: Could we have two weeks instead of 10 days?

THE COURT: I don't want to take over two weeks. There won't be any extensions. Not

over two weeks and I suppose you should have a week and I don't know what your procedure is here but I will reserve decision.

(Whereupon, the trial ended at 1:00 p.m.)

C E R T I F I C A T E

The foregoing 823 pages is a true and accurate of the transcript of the in the matter of Dorothy Boyd, et al. v. The Lefrak Drganization, et al. held on December 3, 1973 December 4, 1973, December 5, 1973 and December 6, 1973 before the Honorable Tom Clark as transcribed by me from my shorthand record.

I further certify that I am not related to any of the parties in the within action and have no interest in this matter.

Joseph L. Benedetto
Acting as Official Court Reporter

Memorandum and Order of June 7, 1972 granting motion of Attorney General, Department of Justice and U.S.A. to dismiss

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

DOROTHY BOYD, individually and on behalf of all others similarly situated,

Plaintiff,

-against-

UNITED STATES OF AMERICA: UNITED STATES DEPARTMENT OF JUSTICE; and JOHN MITCHELL, its Attorney-General; THE LEFRAK ORGANIZATION; and LIFE REALTY, INC.,

Defendants.

MEMORANDUM AND ORDER

71 Civ. 1433

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
★ JUN 15 1972 ★
TIME A.M.
P.M.

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WEINSTEIN, D.J.

Plaintiff, a black mother of five children, is a recipient of public assistance. Claiming discrimination prevents her rental of an apartment from defendants Lefrak Organization and Life Realty, Inc. (Lefrak), she seeks relief on behalf of a class of welfare recipients in the metropolitan area against Lefrak, the United States, the Department of Justice and the Attorney General. Allegedly there has been a failure to enforce the Fair Housing Act (42 U.S.C. § 3601 et seq.) and a violation of the Fifth, Thirteenth and Fourteenth Amendments by discrimination against welfare recipients.

The three federal defendants have moved to dismiss the complaint as to them. As demonstrated below, this motion must be granted. While the Attorney General's discretion in enforcing the Fair Housing Act is limited by the requirements of the Constitution and of the Act itself, he has neither transgressed these limits nor foreclosed plaintiff's separate claim for relief against Lefrak.

I. FACTS AND PROCEEDINGS

Plaintiff attempted to rent an apartment from Lefrak in July, 1971. She was denied a rental application for the stated reason that she is a recipient of public assistance. She then filed a complaint with the United States Department of Justice alleging that the exclusion of public assistance recipients from Lefrak housing

constituted unlawful discrimination under the consent order of this Court of January 28, 1971 in United States v. Life Realty, Inc., 70-C-964 and under the Fair Housing Act. See 42 U.S.C. § 3601 et seq.

The consent order in United States v. Life Realty, Inc., 70-C-964, enjoined Lefrak from discriminating on the basis of race in showing or renting apartments; it provided objective tests for the consideration of rental applications. Among the criteria is a requirement that an applicant's net income per week equal at least 90% of the monthly rental of the apartment applied for ("the 90% Rule"). See paragraph V(c)(4), Consent Order, January 28, 1971, United States v. Life Realty, Inc., 70-C-964.

Mrs. Boyd moved to intervene in United States v. Life Realty, Inc., 70-C-964, contending that the original 90% rule operated in practice as a blanket exclusion of welfare recipients because of the low level of welfare payments, and hence constituted unlawful discrimination. Her motion to intervene was denied but was treated as a complaint in a separate case--the one now before us. See Memorandum and Order, United States v. Life Realty, Inc., 70-C-964, November 4, 1971.

The Department of Justice agreed that a blanket refusal to consider applications of welfare recipients is unlawful. After discussions between the Department

of Justice and Lefrak, the consent order was amended in December, 1971 to include a provision requiring rental to those who do not meet the 90% rule but whose "payment of rent shall be guaranteed by a legally enforceable contract by a duly authorized government agency." It was contemplated that a program of such guarantees for welfare recipients would shortly be funded, but the court is now advised that it has not been.

An amended complaint in the instant case charges that, even as amended, the 90% rule operates to exclude welfare recipients from Lefrak housing although they can afford to pay the required rents out of their public assistance benefits. Allegedly, this discrimination against those with the status of welfare recipient violates the Equal Protection Clause of the Fourteenth Amendment. Moreover, it is argued, because a significantly higher proportion of black as compared to other residents of New York City are recipients of public assistance, the amended 90% rule has an illegal racial effect.

II. CLAIMS AGAINST THE ATTORNEY GENERAL

Relief against the Attorney General is sought on both constitutional and statutory grounds. It is contended that by entering into the original and amended consent agreements with Lefrak the Attorney General participated in and approved discriminatory practices,

thereby violating the Fifth and Thirteenth Amendments. Also relied upon is language of section 3613 of title 42 of the United States Code, empowering the Attorney General to request such relief against specified classes of persons "as he deems necessary to insure the full enjoyment of the rights granted by this subchapter." When read together with the provision of section 3608(c) that "All executive departments and agencies shall administer their programs and activities relating to housing and urban development in a manner affirmatively to" eliminate discrimination in rental of certain housing because of race, color, religion, or national origin, there is said to be revealed a Congressional intent to limit the Attorney General's discretion in the enforcement of the Fair Housing Act. Thus, the argument goes, the Attorney General is prohibited from terminating litigation in such a way that would inadequately protect rights of third parties; the amended consent order in United States v. Life Realty, Inc., 70-C-964, constitutes such an impermissible impairment of plaintiff's rights and operates as a "but for" cause of discrimination against her; and she is entitled to declaratory, injunctive and other relief against the government and its named agencies.

The Attorney General's discretion in the conduct of litigation must be exercised within the framework of applicable constitutional and statutory standards. A

prosecutor may not use his discretion in initiating or conducting proceedings--whether criminal or civil--to derogate the statutory or constitutional rights of defendants or others. See, e.g., Brady v. Maryland, 373 U.S. 83, 87-88, 83 S. Ct. 1194, 1196-97 (1963); Dombrowski v. Pfister, 380 U.S. 479, 484, 85 S. Ct. 1116, 1120 (1965); United States v. Automobile Manufacturers Ass'n, 307 F. Supp. 617, 620-21 (C.D. Cal. 1969), aff'd per curiam sub nom. City of New York v. United States, 397 U.S. 248, 90 S. Ct. 1105 (1970). Cf. United States v. Frazer, 317 F. Supp. 1079, 1084 (M.D. Ala. 1970); Davis, Discretionary Justice (1969), esp. Chapter VII. In terminating litigation through a consent order, the Attorney General's proposed settlement is subject to the general supervision of the court to insure that it is consistent with relevant statutes and the public interest. See, e.g., United States v. Automobile Manufacturers Ass'n, 307 F. Supp. 617, 620-21 (C.D. Cal. 1969), aff'd per curiam sub nom. City of New York v. United States, 397 U.S. 248, 90 S. Ct. 1105 (1970). It is hardly necessary to add that the doctrine of prosecutorial discretion has never insulated conduct from review on charges of bad faith, fraud, or illegality. See, e.g., Fed. R. Civ. P. 60(b)(3).

The valid premise of plaintiff's argument does not, however, support the relief requested in this case. There is no allegation of bad faith on the part of the Attorney General or of collusion with Lefrak. The amended consent order in United States v. Life Realty, Inc., 70-C-964, was approved by this court after a hearing in public at which comment by any interested person was possible and, in fact, plaintiff's objection on the grounds of inadequacy of the decree was brought to the court's attention.

Were plaintiff, having been denied intervention, foreclosed from requesting additional relief by the existence of the consent order, it might well be appropriate to hear a collateral attack on the order through a proceeding in which the Attorney General was joined as a defendant. But plaintiff in this case is not so inhibited.

The Fair Housing Act explicitly provides for private enforcement. 42 U.S.C. § 3612. United States v. Life Realty, Inc., 70-C-964, does not operate as res judicata, collateral estoppel, or any other bar to plaintiff's suit for relief. As the court noted in its discussions with the parties before signing the amended decree, it set minimum protections against discrimination without precluding individuals from seeking additional remedies required by their special circumstances. See

United States v. Blue Chip Stamp Co., 272 F. Supp. 432, 438 (C.D. Calif. 1967), aff'd per curiam sub nom. Thrifty Shoppers Scrip Co. v. United States, 389 U.S. 580, 88 S. Ct. 693 (1968)(denying motion to intervene in an antitrust suit on the grounds that the proposed intervenors' "ability to prosecute their respective cases [is not] impaired or impeded by the Government's case.").

Plaintiff's requested relief against the Attorney General (as well as the United States and Department of Justice) adds nothing, in the circumstances of this case, to this court's power to provide remedies for housing discrimination against the private defendants who control the housing sought by plaintiff's class. On the contrary, joinder of the federal defendants would add unnecessary complexity and avoidable burdens on judicial resources. See Chance v. Du Pont, -- F. Supp. --, --, 70-C-1107, pp. 72-76 (E.D.N.Y., May 18, 1972).

There is no indication in the legislative history of the Fair Housing Act that Congress intended to limit the Attorney General's normal enforcement discretion as the government's chief law officer. See United States v. Hunter, -- F. 2d --, -- n.22, -- (4th Cir. 1972). Cf. United States v. Northside Realty Associates, 324 F. Supp. 287, 293-94 (N.D. Ga. 1971)(defendants "may not by deposition probe the mental process by which the

Attorney General exercised his discretion" under 42 U.S.C. § 3613); United States v. Gray, 315 F. Supp. 13, 24 (D. R.I. 1970)(under the analogous enforcement provision of the Public Accomodations Title of the Civil Rights Act of 1964, 42 U.S.C. § 2000a-5, "the Attorney General's initial determination of reasonable cause . . .does not present a separate litigable issue."). But cf. Note, Discretion to Prosecute Federal Civil Rights Crimes, 74 Yale L. J. 1297 (1965).

Plaintiff urges that once a lawsuit moves from the "planning" to the "operational" stage, the Attorney General's discretion is significantly reduced. The Fifth Circuit explicitly rejected such a theory in a suit for damages against the United States based on the Attorney General's refusal to prosecute an alleged criminal offense. Smith v. United States, 375 F. 2d 243 (5th Cir.), cert. denied, 389 U.S. 841, 88 S. Ct. 76 (1967). It relied upon the Attorney General's exclusive responsibility to conduct litigation in the light of national policy, prosecutorial resources, and the circumstances of the particular case. 375 F. 2d 243, 247-48.

The Smith case differs from the present case in two significant respects. First, it involved an effort to exert private control over the process of criminal

prosecution, the most insulated of all prosecutorial functions. See, e.g., Connecticut Action Now, Inc. v. Roberts Plating Co., 457 F. 2d 81, 86-87 (2d Cir. 1972). Second, plaintiff's interests in Smith were evidently opposed to important national policy on civil rights, while in this case plaintiff's interests are arguably consistent with national fair housing policy. Nevertheless, we decline to impose "operational" liability on the Attorney General in the absence of constitutional violations or explicit congressional authorization when there is an adequate alternative method of vindicating plaintiff's claims. Cf. United States v. Blue Chip Stamp Co., 272 F. Supp. 432, 438 (C.D. Calif. 1967), aff'd per curiam sub nom. Thrifty Shoppers Scrip Co. v. United States, 389 U.S. 580, 88 S. Ct. 693 (1968).

There is no substance to plaintiff's charge that the Attorney General's approval of the consent order in United States v. Life Realty, Inc., 70-C-964, constitutes federal participation in racial discrimination in violation of the Fifth and Thirteenth Amendments. Reliance is placed on Gautreaux v. Romney, 448 F. 2d 731 (7th Cir. 1971), Garrett v. City of Hamtramck, 335 F. Supp. 16 (E.D. Mich. 1971), and Hicks v. Weaver, 302 F. Supp. 619 (E.D. La. 1969), in which the Secretary of Housing and Urban Development was found to have violated the Fifth Amendment through his participation in racially

discriminatory housing policies. In each of these cases involving the Department of Housing and Urban Development (HUD), the court stressed that department's extensive involvement in and control of the policies and programs in question.

In Hicks the court concluded that

> "HUD was not only aware of the [racially segregated] situation in Bogalusa but it effectively directed and controlled each and every step in the program. Nothing could be done without its approval. HUD thus sanctioned the violation of plaintiffs' rights and was an active participant since it could have halted the discrimination at any step in the program." Hicks v. Weaver, 302 F. Supp. 619, 623 (E.D. La. 1969).

Similar findings were made by the Seventh Circuit in Gautreaux v. Romney, 448 F. 2d 731, 739 (1971), and by the District Court in Michigan in Garrett v. City of Hamtramck, 335 F. Supp. 16, 27 (E.D. Mich. 1971).

In this case the Attorney General stands in a position different from that of HUD. He does not control or disburse any funds. He has no authority, independent of the orders of this court, to supervise rental procedures. His litigation to enforce the Fair Housing Act does not constitute "participation" in the allegedly discriminatory activities of Lefrak.

When the Attorney General acts as lawyer for the government or any of its branches his discretion in

conducting litigation, as in the case of attorneys appearing for private clients, is very broad. It is quite different from the discretion of an administrator or other official charged with carrying out substantive programs.

This distinction between lawyer and administrator is illustrated by Ely v. Velde, 451 F. 2d 1130 (4th Cir. 1971). There the Law Enforcement Assistance Administration of the Department of Justice was required, in approving a federal grant to a state agency, to comply with the requirements of the National Environmental Policy Act (42 U.S.C. § 4321 et seq.) and the National Historic Preservation Act (16 U.S.C. § 470 et seq.). In Ely, unlike the case now before us, the Department of Justice was acting as an administrator, not as a lawyer for the government.

The Attorney General has taken successful legal action against Lefrak, eliminating the possibility of direct racial discrimination in the rental of apartments. (Under the terms of the pleadings and settlement in United States v. Life Realty, Inc., 70-C-964, there was no admission or adjudication that Lefrak had ever discriminated.) The Attorney General did not harm plaintiff's class by failing to prevent what are alleged to be more subtle forms of discrimination.

III. CLAIMS AGAINST THE UNITED STATES OF AMERICA AND THE DEPARTMENT OF JUSTICE

Plaintiff seeks declaratory and monetary relief from the United States of America and the Department of Justice, and mandamus relief against defendant Department of Justice. Since these claims have the same basis as those against the Attorney General, they must be dismissed for failure to state a claim upon which relief can be granted. The government has not wronged these defendants within the meaning of the Federal Tort Claims Act (28 U.S.C. § 1346(a)(2)) by failing to litigate as strenuously as plaintiff thinks it should.

IV. CONCLUSION

The motion to dismiss of the Attorney General, the Department of Justice and the United States is granted.

So ordered.

Dated: Brooklyn, New York
June 7, 1972

Jack B. Weinstein
U.S.D.J.

Stipulation of Fact dated November 5, 1973

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- x

DOROTHY BOYD, individually and on behalf of all others similarly situated,

Plaintiff,

-and-

INEZ STONEY,

Intervenor-Plaintiff,

-against-

THE LEFRAK ORGANIZATION and LIFE REALTY, INC.,

Defendants.

- x

71 Civ. 1433

STIPULATION OF FACT

IT IS HEREBY STIPULATED AND AGREED, by and between the attorneys for the respective parties hereto, as follows:

1) The lists of vacant or available apartments admitted as genuine by the defendants (Response to Plaintiffs' Request for Admission No. A7) are lists of vacant or available apartments in buildings owned or operated by defendants from June 23, 1971 to September 30, 1971, with the exception of the following:

DATE	BUILDING	APARTMENT
6/23/71	Bucknell	7 B
	Park Vendome	10 E
6/30/71	Notre Dame	7 D
7/15/71	California	D 9
7/15/71	Auburn	4 H
	Illinois	3 T
7/29/71	New Yorker	7 L
	Park Imperial	7 A
8/12/71	Birch	7 Z
	Brussels	7 K
8/19/71	Martinique	2 G
	Birch	7 U
6/30/71	Idaho	5 A
7/7/71	Dartmouth	710
8/12/71	Hollywood	78
9/2/71	Georgetown	2 D
9/9/71	National 35	115
9/16/71	Newport	7 B

2) Chapter 24, § 604-4.0 of the Administrative Code of the City of New York, states as follows:

> "Contracts to make rental payments. --
> 1. The commissioner of social services shall have the power to and may, within the amount appropriated therefor, enter into a contract to make rental payments to the owner, landlord, lessee, managing agent of, or other person entitled to rent and receive rental payments for, housing accommodations whenever (a) a recipient of public assistance and care has neglected or failed to make rental payment and payment has not otherwise been made, or (b) a housing accommodation is vacant and the owner, landlord, lessee, managing agent or such other person agrees in such contract to hold such housing accommodation vacant and to accept as a new tenant a recipient of public assistance and care designated by the commissioner, and until such housing accommodation is occupied by and rental payments are made by such new tenant; provided, however, that no rental payments shall be made in accordance with this provision if such housing accommodation remains vacant for more than sixty days.

2. The commissioner shall not be deemed to have assumed the duties of a tenant under lease because he has entered into a contract to make rental payments."

This Program has never been funded.

3) No apartments have been rented to welfare recipients by defendants with rent guaranteed by the New York City Department of Social Services under Chapter 24, § 604-4.0 of the Administrative Code of the City of New York.

4) The one hundred and nineteen Lefrak residential buildings in the City of New York contain 15,484 apartment units.

5) In 1968, forty-seven petitions commencing non-payment dispossess proceedings were served on tenants living in Lefrak buildings.

Stipulation of Fact dated November 5, 1973

6) From January 1, 1972 to August 30, 1972, forty-three petitions commencing non-payment summary dispossess proceedings were served on tenants living in Lefrak buildings.

Dated: New York, New York
November 5, 1973.

WILLIAM L. REESE, JR.,
BEDFORD STUYVESANT COMMUNITY
LEGAL SERVICES CORPORATION

By: S/ Ruth Balen
Ruth Balen

Attorneys for Plaintiff and
Intervenor-Plaintiff

GOLDSTEIN, SHAMES & HYDE,

By: Edward Brodsky
Edward Brodsky,
A Member of the Firm,

Attorneys for Defendants.

Order dated April 22, 1974 amending the findings of fact and conclusions of law

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
★ APR 22 1974 ★
AE A.M.
P.M.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -

DOROTHY BOYD, individually and on behalf of all others similarly situated,

71 C 1433

Plaintiff,

INEZ STONEY,

Intervenor-Plaintiff,

-against-

ORDER

THE LEFRAK ORGANIZATION and LIFE REALTY, INC.,

Defendants.

- -

The findings of fact and conclusions of law is amended so as to read as follows:

Dated: Brooklyn, New York
April 22, 1974

TOM C. CLARK - Associate Justice
United States Supreme Court (Ret.)

Amended Findings of Fact and Conclusions of Law

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

DOROTHY BOYD, individually and on behalf of all others similarly situated, Plaintiff INEZ STONEY, Intervenor-Plaintiff against THE LEFRAK ORGANIZATION AND LIFE REALTY, INC., Defendants.	Civil Action No. 71-C-1433 FINDINGS OF FACT And CONCLUSIONS OF LAW

This class action tests the validity under the Fair Housing Act of 1968, 36 U.S.C. §§ 3601, et seq., the Civil Rights Act of 1866, 42 U.S.C. § 1982 and the Fifth Amendment to the Constitution of the United States, of the financial criteria applied by the defendants, Life Realty Company, and Lefrak Management Company, affiliated concerns, to the rental of their apartments in New York City. Under the defendants' rule, the applicant for the rental of an apartment must have a weekly net income equal to at least 90 percent of the monthly rent of the apartment sought to be leased; or, the applicant must furnish a co-signer or guarantor of the rent who, in addition to his own personal rent, fixed payments and taxes of 20 percent, earns a sum weekly that is equal to 110 percent of the monthly rental guaranteed.

Amended Findings of Fact and Conclusions of Law

The plaintiffs, Dorothy Boyd and Inez Stoney, both blacks and applicants for rental of defendants' apartments, direct their attack on the 90 percent financial rule of the defendants, claiming that it has a marked discriminatory racial and ethnic impact on people on public welfare (of which they are recipients); that 77 percent of the people on public welfare are of black or Puerto Rican extraction and the discrimination is, therefore, racial; that it is not justified by business necessity and is violative of the Fair Housing Act of 1968. Plaintiffs further say that the defendants' 90 percent rule also violates the Civil Rights Act of 1866 which was designed to prohibit all racial discrimination, whether or not under color of law, with respect to the leasing of property; and that it violates the Fifth Amendment to the Constitution of the United States, the due process clause of which includes the prohibition of racial and other discriminations which would constitute denials of equal protection under the Fourteenth Amendment; and that governmental action is present through a consent order heretofore secured by the Government and discussed infra.

The court finds that the defendants' 90 percent financial rule or co-signer-guarantor substitute does not accurately measure rent-paying ability of public assistance recipients; that, as a result, public assistance recipients in New York City cannot qualify for rental of defendants' apartments; that some 77 percent of the public assistance recipients are of black or Puerto Rican extraction; and that the 90 percent rule is arbitrary and discriminatory as to public assistance recipients of New York City as a

class, including those of black and Puerto Rican extraction; that there is no overriding legitimate business necessity for the 90 percent financial rule; all in violation of the Fair Housing Act of 1968 and the Civil Rights Acts aforesaid.

1. Background of the Litigation:

(a) The Government Consent Order:

While evidence of the entry of a consent order is not evidence of guilt, it is proper to refer to the same as background. On August 6, 1970, the United States filed a civil complaint against the defendants, alleging that they had practiced discrimination because of race, color or national origin in the rental of apartments in New York City. The Government alleged that such discrimination was evidenced by (1) defendants' false representations made to blacks and Puerto Ricans that they had no apartments available when, in fact, they did but were unwilling to rent them to non-whites; (2) discrimination against persons in terms, conditions and privileges in rental because of race, color or national origin; and (3) deliberately channeling black applicants to selected apartment buildings while channeling white persons only to other buildings, both under defendants' management. Defendants denied these allegations specifically but agreed to a consent decree which was entered on January 28, 1971, remained in effect for two years and required the defendants to rent their apartments on the basis of the same 90 percent rule here complained of as unconstitutional.

On July 7, 1971, plaintiff Boyd inquired at the defendants' rental offices in Brooklyn as to the rental of an apartment and was permitted to

inspect two apartments. Defendants' rental agent, Mr. Cuccia, told Mrs. Boyd to bring her husband's social security card and a job reference to his office. When Mrs. Boyd told Mr. Cuccia that she was separated from her husband and was on public assistance, he told her that defendants did not rent apartments to public assistance recipients. Mrs. Boyd then complained to her attorney, Ms. Ruth Balen, and the latter telephoned Mr. Jerry Richter, defendants' Vice President for Management. Mr. Richter told Ms. Balen that defendants had a policy against renting their apartments to welfare recipients. Ms. Balen asked for an explanation, and Mr. Richter stated that defendants feared that maintenance problems would result from having welfare recipients as tenants. Ms Balen's testimony stands uncontradicted.

On July 13 Mrs. Boyd filed a complaint with the Department of Justice but nothing resulted, and she moved for leave to intervene in the Government's consent decree, which was denied. However, the court permitted Mrs. Boyd's papers to be treated as a new suit and pursuant thereto she filed an amended complaint on December 30, 1971, alleging the same claims asserted here, except the parties included the Attorney General of the United States and the Department of Justice as well. In the meanwhile, on December 22, 1971, and over the objections of Mrs. Boyd, the Government's consent decree was amended so as to also permit a public assistance recipient to seek the guarantee of the rent by a duly authorized government agency and required the defendants to accept such a guarantee when tendered. The program, however, was never

implemented, and in application the consent decree was left with its original requirement, i. e. the 90 percent rule of the defendants, together with their co-signer-guarantor arrangement. On May 18, 1972, Mrs. Boyd was permitted to maintain this suit as a class action composed of all of the public assistance recipients in New York City. On motion of the United States Department of Justice and the Attorney General, the case was dismissed as to them on June 7, 1972. Boyd v. United States, 345 F. Supp. 7

(b) Mrs. Boyd's Background:

The plaintiff, Mrs. Boyd, has five children, ages four to eighteen years. She lived at the St. George Hotel where she had two rooms and a bath, without kitchen. She paid $88.65 a week for the rooms; she used cots for the children and no meals could be prepared in the rooms. Mrs. Boyd testified that she tried diligently to rent an apartment but was refused because of the five children and also being on public assistance. Mrs. Boyd finally found an apartment in Far Rockaway and is paying $260 a month rent. She testified that the apartment was not satisfactory because of its distance from the city, is not heated and, at times, has no hot water.

(c) Mrs. Stoney's Background

Mrs. Stoney is a black public assistance recipient with four minor children, ages three to thirteen years of age. She had been housed in two hotel rooms. In March, 1972, she visited the defendants' office and was permitted to inspect one apartment. Upon seeking to rent a $295.00 a month apartment and on advising that she was a public assistance

recipient, she was told by defendants' rental agent, Mrs. Gelman, that she would have to secure a guarantor who was earning at least $300 a week. Mrs. Stoney was not allowed to make a deposit nor file an application for an apartment. Mrs. Gelman required that Mrs. Stoney bring the guarantor personally to her offices. The guarantor that Mrs. Stoney obtained was not acceptable to Mrs. Gelman because he made only $200 a week.

(d) The Lee Background (witness for the plaintiff):

Mrs. Shirley Lee, mother of two children ., is also a black public assistance recipient. In late 1971 she read an article in the press concerning the changed policy of the defendants as to public assistance recipients as provided in the Government's consent decree. She called at the offices of the defendants and was permitted to inspect a 4- .room apartment renting for $235 per month. Her monthly public assistance check was below this amount, and Mr. Cuccia told her that she would have to obtain a guarantor from the welfare agency. Refused by the agency, Mrs. Lee then brought a personal guarantor to the offices of the defendants, but he misrepresented the name of his employer and was not further checked.

2. Defendants' Procedures as to Applicants and Their Impact:

(a) An applicant inquiring as to rentals is shown a list of vacancies and chooses an apartment to inspect, after which he is given the business card of the defendants' rental agent and is directed to the superintendent of the building selected for inspection. After being shown the apartment the applicant returns to the rental agent and is questioned about his job

and income. If the latter appears insufficient, the applicant is not permitted to sign an application but is told to secure a co-signer-guarantor for his lease and to return with him to the rental office. Those unable to secure a co-signer-guarantor are refused the apartment and no application is filed. Those securing a co-signer-guarantor, return with him to the rental office and if the co-signer-guarantor appears to be qualified, an application is completed for the applicant and his co-signer-guarantor. If at any time it appears that the co-signer-guarantor is not qualified, the application procedure ends and the forms already filled in are destroyed. If the application is completed, a deposit of $25 is required which is refunded if the applicant is rejected or cancels out. A credit report is then obtained. If the lease is made, the co-signer-guarantor signs the lease with the applicant.

The procedure is similar for public assistance recipients. When the applicant reveals that he is a public assistance recipient, he is told to get a co-signer-guarantor. If he is unable to do this, he is given a "Notice to Welfare Recipients" which was approved in the consent decree and lists the ways in which a recipient may qualify for an apartment.

(b) The defendants' co-signer-guarantor financial rule requires that there be deducted from the co-signer-guarantor's gross income (1) his own rent; (2) his income tax estimated at 20 percent of gross salary; (3) all withholdings from his pay; (4) all installment or alimony payments. The balance remaining must, on a weekly basis, equal 110 percent of the

monthly rent to be guaranteed. For example: If the rent to be co-signed guaranteed is $150 a month, and the guarantor's income is $12,000 annually, with his own rent at $150 per month and federal taxes at 20 percent, he could not qualify. After deducting his own rent and his federal taxes [$4200], he would have only $7800 left or $150 per week. But he must earn 110 per cent of his monthly rent, i. e. $165.00 each week.

It is difficult, if not impossible, for the average black or Puerto Rican applicant to secure a white guarantor or co-signor, and a very small percentage of these races themselves can qualify. As a result, most blacks and Puerto Ricans cannot meet either of defendants' requirements.

3. The Statistical Position of Public Assistance Recipients in the New York City Community.

(a) In 1970, 23 percent of all public assistance recipients were white and 72 percent black and Puerto Ricans. However only 3 percent of the white population were recipients, while 20 percent of the black and 29 percent of the Puerto Rican population were in that category. This condition worsened and by 1973 about one-third of the black and one half of the Puerto Rican population were recipients while only 5 percent of the white population were in that category. Ninety seven percent of the public assistance recipients live in pre-1929 buildings and a vast majority of them live in the oldest, most poorly maintained buildings in the city. The City's poverty areas are racially and ethnically segregated housing 80.7 percent of the public assistance recipient population. Three-fourths of the buildings housing whites exclusively

have no public assistance recipients in their buildings while less than half of the all black and less than a quarter of the Puerto Rican buildings have no public assistance tenants. The rent-income ratios between white and minority groups also show a wide disparity: 47.4 percent of white renters exceed the defendants' 90 percent rule while 57.6 percent of the black and Puerto Ricans exceeded that ratio. If one applied the defendants' 90 percent rule to white renters presently renting apartments in Lefrak's rental range, 53.1 percent of them would be excluded, while 70.4 percent of the blacks and 74.8 percent of the Puerto Ricans would not be eligible.

The evidence indicates that for the average price, minimum size defendants' apartment, only 18 to 20 percent of all New York City renter-households could meet the defendants' 90 percent rule. The eligibility rate under the rule is more than four times as favorable to whites as for blacks and ten times greater than for Puerto Ricans. Hence, an average white household would have almost ten times a more favorable opportunity to rent such an apartment from the defendant than would a Puerto Rican household and four times that of a black one. With regard to the <u>minimum</u> price-minimum-size apartments, the white households in the white upper half of the population qualify by 74.1 percent while the blacks fall to 27.2 percent and the Puerto Ricans to 13.4 percent. Over all we find 34.7 percent of the whites qualifying while only

10.7 percent of the black and 5.6 percent of the Puerto Ricans are able to do so.

(b) Plaintiffs' expert, Dr. Bickel, testified that the defendants' 90 percent economic rule acts to exclude everyone earning less than $10,500 per year; that 24.1 percent of the white households can qualify to rent defendants' apartments under the 90 percent economic rule, while only 5.8 percent of the black households and 2.6 percent of the Puerto Rican ones can do so. Welfare recipients are totally excluded from renting defendants' apartments, except by way of guarantors or co-signers. As we have seen, a guarantor is not permitted to utilize his wife's income to qualify; his own rent is deducted from his income as well as all taxes, withholdings etc.; and he must earn 110 percent of a month's rent in a single week.

(c) Defendants have kept no records as to the classification of their tenants by race, public assistance recipients etc. except during the 14-month period of the amended consent decree. During that period the records show only twenty public assistance recipients attempted to rent apartments. Seventy per cent of the whites were accepted but only one third of the blacks. All of the white applicants had white guarantors and all of the black applicants, save one, had black ones.

Two of the ten white applicants had Spanish surnames; one was rejected and one accepted. This left 8 white applicants, of whom 6 were

accepted. Of the 10 blacks, 4 withdrew their applications; 4 were rejected and only 2 accepted. Linking the Spanish surnamed applicants with the black, we have 3 out of 12 accepted, 25 percent, while 75 percent of the whites were accepted. Taking the blacks alone, only 20 per cent were accepted.

These statistics support the conclusion that even among the recipient-applicants with co-signers and completed applications, the whites accepted run three to one over the blacks.

The small number of public assistance applicants on defendants' records is the result of their application procedures i.e. no application can be filed until the applicant establishes his eligibility. Indeed, Mrs. Gelman, manager of the defendants' Brooklyn office, testified that she handed out from fifty to one hundred of the "Notice to Welfare Recipients" during the period. Only 7 applicants filed applications at the Brooklyn office during this same period. As a consequence the statistics of the defendants are suspect which tends to destroy their claim of non-bias as to rentals.

4. The Defendants' Operations:

Defendants have 15,484 apartments in their 119 / buildings with rental rates from $150 - $300 a month. On a city-wide basis, about 25 percent of the rental housing is in this range. There are approximately 480 public assistance recipients occupying apartments in defendants' buildings. There is no evidence that any recipient applied for rental of defendants' apartments prior to December 22, 1971.

In 1969 there were 269 black tenants and 93 Puerto Rican ones in defendants' apartments in Brooklyn; ten buildings had no blacks or Puerto Rican tenants; twenty-two buildings had no black tenants; five buildings had no Puerto Ricans; a total of thirty-seven buildings were entirely segregated. All but sixteen of the blacks lived in 9 buildings. Blacks have 21 percent of the population of New York City and Puerto Ricans have 10 percent. In defendants' buildings there were 6 percent blacks and 2 percent Puerto Ricans. One of plaintiffs' experts, Dr. Bickel, pointed out that this latter percentage was almost identical to the acceptance rate by defendants, i.e. 6 percent blacks and 2 percent Puerto Ricans in their Brooklyn buildings. During the consent order blacks rented 630 apartments of the 4642 located in Brooklyn, i.e. 13 percent, raising the black percentage to 19.8 percent, still lower than the percentage existing between whites and blacks in New York City. Defendants claim that nearly half of the apartments rented in 1971-1973 were to blacks, still the defendants' rejection rate of blacks was two to four times as great as whites. The defendants produced no evidence as to the ethnicity of their buildings in other boroughs, including Queens. Mr. Meyer, a witness for defendants, testified that while on his periodic rounds of the defendants' buildings, he saw "a few" blacks and Puerto Ricans. However as to defendants' project at Lefrak City, he estimated 40 percent to 50 percent of the tenants in 4000

apartments were black and Puerto Rican. This was based on a few hundred blacks and Puerto Ricans that he had seen at tenants' meetings in the buildings. The court finds this testimony speculative and gives it little weight.

5. The Expert Testimony:

The expert witnesses agreed that a financial standard is used in attempting to measure the buyers' ability to pay rent on a continuing basis. They differed, however, on the reasonableness of the defendants' 90 percent rule. The plaintiffs' experts concluded that the rule arbitrarily excluded all households earning less than $10,500 annually and that a public assistance recipient's income was below that level. A plaintiff expert proposed that under the disposable income concept, 49 percent of the total income might be applied to rent by the average working family and that the allocation would ensure defendants of their rent payments. He found the defendants' rule completely unrealistic.

The defendants insist, however, that their rule is objective and uniform on its face as well as in its application. They say that the absence of state action, the lack of racial motivation as well as impact, and their even-handed application of the rule makes it unnecessary to reach the question of whether it has a reasonable relationship to the tenants' ability to pay. However, if that point is reached, defendants' experts say the 90 percent financial rule is roughly equivalent to the 25 per cent rule that is often applied in New York City. Indeed, they say, it is more

liberal toward public assistance recipients since they pay no taxes. However, defendants' Exhibit 5 shows that a recipient would have to pay 53.5 percent to 79.7 percent of their income in rent should the full rent of an apartment of the defendants be required. They also say that the 90 per cent rule is "generally in line" with the industry-wide standard of 25 per cent of gross income and is a reasonable business standard in line with a tenant's ability to pay. However, plaintiffs' experts say that 39.1 percent of the renters exceed the 25 percent standard and 50.5 percent, the defendants' 90 percent rule. In addition, they convert defendants' 90 percent rule into a 20 percent one, without deductions from gross income, and into a 19 percent rule, if taxes and other fixed obligations are included. In this regard defendants' expert, Dr. Tobier, admitted on cross-examination, after some "on the witness chair" calculation, that the 90 percent rule was roughly equivalent to a 22 percent one. The court finds that 20 percent would be the more accurate figure. Dr. Tobier based his findings on a Bureau of Labor statistical study of how a $4841 income family of four should allocate its income. It allocated $83 a month or 20.4 percent to rent: 29.3 percent to food; 14.2 percent to taxes; 8.8 percent to medical care; 11.1 percent to clothing, etc. 6 percent to transportation and the balance to incidentals. However, such an allocation would not fit the typical public assistance recipient who has no taxes, no medical expense, no automobile and reduced food costs because of food stamps. Indeed the public assistance recipient family of seven pays

only $97 for $148 in food; if the rent ratio exceeds 30 percent, the benefits are often increased; if unfurnished apartment or house is occupied, special furniture allowances are made; some recipients may work and the income therefrom disregarded up to $30, plus one-third of the remainder; special grants for carfare, lunches, baby sitters, etc. are granted. Defendants' 90 percent rule takes into account none of this additional income. Indeed, their application forms do not provide any space for such items and none are noted thereon, the defendants requiring co-signer-guarantors on public assistance recipients. However, non-recipients are cautioned to add every item of income, including non-cash bonuses included in group health insurance policies.

The court finds that the public assistance recipient may also exceed the ratio of rent to income that defendants' 90 percent rule requires just as do 50.9 percent of the other renters of households in New York City and 39.1 percent of those using a 25 percent standard. The funds for such additional rent would come from benefits which recipients are allowed and which defendants do not relate to; or if a recipient wishes, he might cut down on other items in his budget, such as food, clothing, etc. and apply the same to rent.

6. Recapitulation.

The court finds that public assistance recipients are required to locate their own housing; they receive a flat grant for their basic needs and rent; the latter is usually in the full amount that the recipient actually

pays; however, there are no upper limits on rents save it is subject to the approval of the New York Department of Social Services; it is the latter's responsibility to evaluate the rental, the adequacy of space, the terms of tenancy; and in so doing it has "levels of approval"; when the proposed rental exceeds these levels of approval, the matter is referred to the Central Office of the Department for determination; on February 28, 1974, the State Department of Social Services amended its Regulation 352.3(a) so as to require each social service district to provide "an allowance for rent in the amount actually paid but not in excess of the appropriate maximum of such district. . ."; however, this amendment's effective date has been postponed until July 1st and may never become effective. Indeed, even if implemented, the regulation would not prohibit recipients from dipping into their food, clothing or other allowances to supplement their rent. The court points to this recent occurrence as additional evidence that the rental allowance to recipients is not fixed, has no ceiling and is only limited by the decision of the recipient himself to abide by welfare department guidelines.

The court further finds that under defendants' 90 percent financial rule, all of the public assistance recipients in New York City are excluded; that blacks are excluded in greater percentage than whites and Puerto Ricans in greater percentage than Blacks; that the 90 percent financial rule is generally discriminatory and has a direct and unfavorable impact on public assistance recipients; that defendants' alternative rule,

i.e. co-signer-guarantor arrangement permits a lesser percentage of black and Puerto Ricans to qualify for the rental of apartments; that the defendants 90 percent financial rule has no reasonable relationship to the ability of public assistance recipients to pay rent and is both arbitrary and discriminatory that rather than seeking the approval of the Department of Social Services of the proposed rent as being compatible with the applicant's support budget and investigating the reliability of the applicant, the defendants arbitrarily apply their 90 percent financial rule and refuse the applicant; and, finally, there is no business necessity requiring the use of the defendants' 90 percent financial rule since a policy with less discriminatory impact would be quite sufficient to fully protect the defendants in collecting their rent. See Colon v. Tomkins Square Neighbors, Inc. 294 F. Supp. 134, 138 (S.D.N.Y. 1968); Battle v. Municipal Housing Authority for City of Yonkers, 53 FRD 423, 428 (S.D.N.Y. 1971).

7. Conclusions of Law:

(a) The court concludes that it has jurisdiction of this case. Trafficante et al v. Metropolitan Life Ins., 409 U.S. 205 (1972).

(b) The Civil Rights Act of 1968, 42 U.S.C. §§ 3601 et seq. declares it to be unlawful to refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion or national origin. The Supreme Court in Trafficante v. Metropolitan Life Ins. Co., supra, has declared that the purpose of the

Act is "to replace the ghettoes by truly integrated and balanced living quarters", at 211, and that it was to be given a "generous construction", at 212, to achieve that end. The requirements of the Act are not limited to intentional acts of racial discrimination but preclude "insidious and subtle" practices having a racial effect. United States v. Gilman, 341 F. Supp. 891, 903 (S. D. N. Y. 1972); United States v. Grooms, 348 F. Supp. 1130 (M. D. Fla. 1972). Also see Male v. Crossroads Associates 337 F. Supp. 1190, Aff. 469 F. 2d 616 (2d Cir. 1972), where as here, defendants claim public assistance recipients do not receive a sufficient rent allowance to afford defendants' apartments. "Such an assumption," the court said in Male, "appear to be unfounded. There exists a procedure by which welfare recipients can obtain rent supplements, which in many cases, would enable them to afford apartments" in defendants' buildings. At 1198. Finally, defendants 90 percent financial rule runs counter to the finding in Findlilakis v. Secretary, 357 F. Supp. 547 (1973) where Judge Peckham of the N. D. California struck down a regulation of the Department of Housing and Rural Development requiring that a prospective tenant's rent to "adjusted" income ratio be less than 35 percent. This formula, as here, excluded the non-cash benefits which have been pointed out, supra. A 35 percent formula is, of course, much less drastic than the 90 percent financial rule of the defendants. In light of these considerations, there can be no doubt but that the defendants' 90 percent financial rule operates as "built in headwinds for minority groups," Griggs v. Duke Power Co. 401 U. S. 424 (1971) and violates the Fair Housing Act of 1968.

(c) The defendants' 90 percent financial rule violates the Civil Rights Act of 1866 which declares that all citizens "shall have the same rights . . . as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property." See Jones v. Mayer 392 U. S. 409 (1968); Sullivan v. Little Hunting Park, Inc. 396 U. S. 229 (1969).

(d) In light of the foregoing it is not necessary to pass upon plaintiffs' Fifth Amendment claims.

These Findings of Fact and Conclusions of Law are entered pursuant to Rule 52 (a) of the Federal Rules of Civil Procedure.

The Clerk of the Court is directed to enter final judgment in accordance herewith, including appropriate injunctive relief. No proof of damages having been offered, none is allowed. It is so ordered.

Tom C. Clark
Associate Justice, United States
Supreme Court, retired.

Dated: 4/15/74

Order Staying Injunctive Relief dated April 29, 1974

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DOROTHY BOYD, individually and on behalf of all others similarly situated, Plaintiff, INEZ STONEY, Intervenor-Plaintiff, against THE LEFRAK ORGANIZATION and LIFE REALTY, INC. Defendants.	Civil Action No. 71-C-1433 ORDER STAYING INJUNCTIVE RELIEF

Defendants, by their attorneys, Goldstein, Shames & Hyde, having orally moved this Court for an Order staying the injunctive relief granted against defendants in the amended judgment entered in the above-captioned case on April 29, 1974, and upon hearing Edward Brodsky, Esq., one of the attorneys for the defendants herein in support of said motion, and upon hearing Ruth Balen, Esq., attorney for plaintiffs herein in opposition thereto, and upon due deliberation of the Court,

NOW, upon motion of Goldstein, Shames & Hyde, attorneys for the defendants herein, it is hereby

Order Staying Injunctive Relief dated April 29, 1974

ORDERED, that said motion is granted and that the injunctive relief granted against the defendants in this Court's amended judgment entered in the above-captioned case on April 29, 1974 be and the same is hereby stayed pending the determination of the appeal to be taken by defendants from said judgment to the United States Court of Appeals for the Second Circuit.

Tom C. Clark
Associate Justice, United States Supreme Court (Ret.) sitting by designation

Dated: April 29, 1974.

Amended Judgment dated April 29, 1974

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
★ APR 29 1974 ★
A.M.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DOROTHY BOYD, individually and on behalf of all others similarly situated,

Plaintiff,

INEZ STONEY,

Intervenor-Plaintiff,

-against-

THE LEFRAK ORGANIZATION and LIFE REALTY, INC.,

Defendants.

Civil Action No.
71-C-1433

NOT FILMED

AMENDED
JUDGMENT

This action came on for trial before the Honorable Tom C. Clark, Associate Justice, United States Supreme Court, Retired, (sitting by designation), without a jury, and the issues having been duly tried and Findings of Fact and Conclusions of Law having been filed by the Court on April 22, 1974, declaring that the defendants' ninety percent financial rule as promulgated and applied by them is in violation of the Civil Rights Act of 1968, 42 U.S.C. §§ 3601, et seq. and the Civil Rights Act of 1866, it is

ORDERED, ADJUDGED and DECREED that the defendants, Lefrak Organization and Life Realty Inc., are enjoined from promulgating and applying in their rental policies the ninety percent financial rule or co-signor-guarantor substitute rule, said rules being found to be in violation of the Civil Rights Act

Amended Judgment dated April 29, 1974

of 1968 and the Civil Rights Act of 1866 with respect to the members of the class herein, to wit: All public assistance recipients within the New York Metropolitan Area who have sought or may seek to rent accommodations in the residential buildings owned or operated by the Lefrak interests.

This judgment corrects, amends and supersedes the judgment entered in this cause on April 22, 1974.

Dated: Brooklyn, New York
April 29, 1974.

Lewis Orgel
LEWIS ORGEL - Clerk of the Court

Approved:

Associate Justice, United States Supreme Court (Ret.)

(75)

Notice of appeal by the Lefrak Organization and Life Realty, Inc. dated May 7, 1974

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- x

DOROTHY BOYD, individually and on behalf of all others similarly situated,

Plaintiff,

INEZ STONEY,

Intervenor-Plaintiff,

-against-

THE LEFRAK ORGANIZATION and LIFE REALTY, INC.,

Defendants.

- x

Civil Action No. 71-C-1433 (TCC)

NOTICE OF APPEAL

SIRS :

PLEASE TAKE NOTICE, that the LEFRAK ORGANIZATION and LIFE REALTY, INC., defendants above-named, hereby appeal to the United States Court of Appeals for the Second Circuit from the Amended Judgment entered in this action on the 23th day of April, 1974, and from each and every part thereof.

Date: New York, New York
May 7, 1974

Yours, etc.,

GOLDSTEIN, SHAMES & HYDE

By: Edward Goldstein
A Member of the Firm

Attorneys for Defendants,
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TO:

RUTH BALEN, ESQ.,
Harlem Assertion of Rights,
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Intervenor-Plaintiff
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